

Toole, Wes

February 26, 2016

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TRACY JAHR, BRENDA THOMAS, )  
TIMOTHY LEE YORK, AND W. BRETT )  
ROARK, )  
Plaintiffs, )  
vs. ) CASE NO.:  
UNITED STATES OF AMERICA, ) 2:14-cv-01884-MJP  
Defendant. )  
/

DEPOSITION OF WES TOOLE

February 26, 2016

9:52 a.m. to 2:57 p.m.

UNITED STATES OF ATTORNEY'S OFFICE  
NASHVILLE, TENNESSEE

Michele Faconti, RPR, LCR (667)

202-220-4158

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<p>1 APPEARANCES OF COUNSEL  2 On behalf of the Plaintiffs:  3 BRIAN C. BROOK, ESQUIRE  4 MATTHEW PEED, ESQUIRE  5 Clinton, Brook &amp; Peed  6 641 Lexington Avenue, 13th Floor  7 New York, NY 10022  8 brian@clintonbrook.com  9 212-328-9559</p> <p>10 On behalf of Defendant:  11 KRISTIN B. JOHNSTON, ESQUIRE  12 Assistant United States Attorney  13 700 Stewart Street, Ste. 5220  14 Seattle, WA 98101-1271  15 kristin.b.johnston@usdoj.gov</p>	<p>1 STIPULATION  2 The deposition of Wes Toole, called as a  3 witness by the Plaintiffs, pursuant to all  4 applicable rules of the 26th day of February, 2016,  5 at the offices of United States of Attorney's  6 Office, Nashville, Tennessee, before Michele  7 Faconti, RPR, Licensed Court Reporter and Notary  8 Public in and for the State of Tennessee.  9 It being agreed that Michele Faconti, a  10 Tennessee Licensed Court Reporter may report the  11 deposition in machine shorthand, afterwards reducing  12 the same to typewritten form. All objections,  13 except as to the form of the question, are reserved  14 to on or before the hearing.  15 It being further agreed that all formalities as  16 to notice, caption, certificate, transmission,  17 etcetera, are expressly waived, EXCLUDING the  18 reading of the completed deposition by the witness,  19 and the signature of the witness.</p>
<p>1 INDEX OF EXAMINATION  2 Page  3 WITNESS: WES TOOLE  4 Examination By Mr. Brook 5</p> <p>6 INDEX TO EXHIBITS  7 Page  8 Exhibit No. 28,  9 JAHR0001475 65</p> <p>10 Exhibit No. 29,  11 JAHR0002066-2068 111</p> <p>12 Exhibit No. 30,  13 No Bates Numbers indicated 142</p> <p>14 Exhibit No. 31,  15 JAHR0001493-1494 150</p> <p>16 Exhibit No. 32,  17 Staff Journal entry 127-130 151</p> <p>18 (Exhibits retained by Mr. Brooks)</p>	<p>1 (09:52 a.m.)  2 Wes M. Toole,  3 having been first duly sworn, as hereinafter  4 certified, testified as follows:  5 MR. TOOLE: I do.  6 EXAMINATION  7 BY MR. BROOK:  8 Q. Would you please state your name for the  9 record?  10 A. Wes Toole.  11 Q. Is that short for Wesley?  12 A. No, sir, just Wes.  13 Q. Have you ever been deposed before?  14 A. No.  15 Q. Okay. So let's start with the basic  16 ground rules, which you may have already been told a  17 little bit about.  18 You're under oath, so that's the most  19 important thing. That means you have to testify  20 truthfully and provide full answers to the best of  21 your ability and recollection.  22 Do you understand that?  23 A. Yes.  24 Q. You'll notice there's a court reporter  25 here taking down your testimony. She's the most</p>

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<p style="text-align: center;">6</p> <p>1 important person in the room. So if she doesn't    2 understand what we are saying, it's not going to    3 ever end up on the transcript. So we need to do our    4 best to do a couple of things. One is to give only    5 verbal answers like yes as opposed to uh-huh or    6 gestures. Do you understand that?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Perfect. We also need to do our best not    9 to talk over each other. Even if you think that you    10 know where I'm going with a question, if I'm still    11 trying to get it out, I ask for your patience to let    12 me try to finish my question and I'll do my best to    13 let you finish your answers. Okay?</p> <p>14 <b>A. Okay.</b></p> <p>15 Q. If you have any questions about a question    16 that I've asked, it's important that you state them    17 if you're not clear about what the question means or    18 what a word means. But if you answer a question,    19 I'm going to assume that you understood my question.    20 Okay?</p> <p>21 <b>A. Understood.</b></p> <p>22 Q. You can ask for a break at any time, just    23 the only thing I ask is that you do not insist on a    24 break while a question is still pending. Okay?</p> <p>25 <b>A. Understood.</b></p>	<p>1 overcome by events. I wasn't able to review all of    2 those CASs. Because I did have involvement in that    3 one also.</p> <p>4 Q. Did you look at those other CASs at all?</p> <p>5 <b>A. I started reviewing them and then I got</b>    6 <b>pulled away and I wasn't able to get back to them.</b></p> <p>7 Q. Did you talk with anyone else besides Ms.    8 Johnston about this deposition?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Did you bring anything here with you    11 today?</p> <p>12 <b>A. No. Just my personal notebook. I don't</b>    13 <b>have any notes in it. I just carry it with me in</b>    14 <b>case I get a call or something like that. And my</b>    15 <b>cell phone. But that's it. No notes, no CASs or</b>    16 <b>anything like that.</b></p> <p>17 Q. What is that you know about the reason for    18 this case and this deposition?</p> <p>19 <b>A. I understand, or my understanding is that</b>    20 <b>the family of the deceased, and I apologize, I don't</b>    21 <b>know the deceased's name, but it was in a case that</b>    22 <b>occurred while I was deployed and involved Aguigui.</b>    23 <b>My understanding is that there's been a wrongful</b>    24 <b>death suit brought by the family. So that's my</b>    25 <b>understanding of it.</b></p>
<p style="text-align: center;">7</p> <p>1 Q. Have you ever testified before?</p> <p>2 <b>A. Yes. In trials or court martial, yes.</b></p> <p>3 Q. But never in front of a court reporter    4 only?</p> <p>5 <b>A. Never a deposition, no, sir.</b></p> <p>6 Q. Tell me everything you did to prepare for    7 your deposition today.</p> <p>8 <b>A. I spoke with Ms. Johnston on the phone on</b>    9 <b>Tuesday, I believe. We spoke for about an hour.</b>    10 <b>And then I was also able to review the CASs, or Case</b>    11 <b>Activity Summaries, from one of the cases. I was</b>    12 <b>able to do that because we have an automated system.</b>    13 <b>I did not physically have the CASs, but I was able</b>    14 <b>to review them on our system.</b></p> <p>15 Q. Which case was that?</p> <p>16 <b>A. It was the death of his wife. I don't</b>    17 <b>recall the LER number, but it was that case in July.</b></p> <p>18 Q. Would the LER number be the three digit    19 number at the beginning of --</p> <p>20 <b>A. Right, the Law Enforcement Report. I</b>    21 <b>believe 0270 something.</b></p> <p>22 Q. 0279?</p> <p>23 <b>A. That sounds right. Yeah. And then the</b>    24 <b>conspiracy case that was 02 something. I was -- I</b>    25 <b>had intended on reviewing those CASs, but we were</b></p>	<p style="text-align: center;">9</p> <p>1 Q. And do you have an understanding of any of    2 the legal issues involved in this case?</p> <p>3 <b>A. Somewhat.</b></p> <p>4 Q. What is that understanding?</p> <p>5 <b>A. I believe the legal issues that were</b>    6 <b>brought to my attention, or if I could rephrase.</b>    7 <b>The questions that have been brought to my attention</b>    8 <b>revolve around how Aguigui was allowed to continue</b>    9 <b>to be on his own, if you will; and thus he carried</b>    10 <b>out the offense against the soldier and his</b>    11 <b>girlfriend. That's kind of my understanding of it.</b></p> <p>12 Q. I'd like to ask you a little bit of    13 background questions about yourself first.</p> <p>14 When were you born?</p> <p>15 <b>A. 7 February 1975.</b></p> <p>16 Q. Where was that in?</p> <p>17 <b>A. In Clarksburg, West Virginia.</b></p> <p>18 Q. Where did you grow up?</p> <p>19 <b>A. I grew up in Marshall, Texas.</b></p> <p>20 Q. What is your highest level of education?</p> <p>21 <b>A. Got a Bachelor's Degree and about 30 hours</b>    22 <b>in post graduate work.</b></p> <p>23 Q. What is the Bachelor's Degree in?</p> <p>24 <b>A. It's a double major in sociology and</b>    25 <b>psychology.</b></p>

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<p>10</p> <p>Q. When did you receive that degree?</p> <p>A. In 1997. Yes.</p> <p>Q. What was the school?</p> <p>A. Austin College. Located in Sherman, Texas.</p> <p>Q. When do you take your graduate school course work?</p> <p>A. Between 2000 and now. It's been a slow process.</p> <p>Q. What is the subject matter of your graduate work?</p> <p>A. At one school I was enrolled in organizational -- organizational leadership and development. In the program I'm in now, it's organizational security management.</p> <p>Q. What was your first job out of college?</p> <p>A. Out of college. U.S. Army. I enlisted shortly before graduation and three days after graduation I was getting off a bus in Fort McClellan.</p> <p>Q. And have you been in the U.S. Army ever since?</p> <p>A. Yes, sir.</p> <p>Q. What was your first duty station?</p> <p>A. My first duty station after completion of</p>	<p>12</p> <p>Q. How long were you at Fort Levinworth for?</p> <p>A. About two years.</p> <p>Q. Where did you go next?</p> <p>A. After that I went to CID school. And after graduation from the academy, went to Germany. Ansbach, Germany.</p> <p>Q. About when was that?</p> <p>A. I want to say that was in November of 2000.</p> <p>Q. How long were you in Germany for?</p> <p>A. We were there for almost five years.</p> <p>Q. When you say we?</p> <p>A. My wife and I.</p> <p>Q. She also in the Army?</p> <p>A. No, she's not.</p> <p>Q. What did you do after your station in Germany?</p> <p>A. After I was stationed in Germany, I was PCS or transferred to Fort Belvoir, Virginia with the Protective Services Battalion.</p> <p>Q. What was that responsibility?</p> <p>A. We did executive protection for senior DOD leadership. Chairman of the Joint Chief of Staff. I culminated my time there as the Protective Service Officer for the Secretary of Defense.</p>
<p>11</p> <p>basic training and AIT, was Camp Casey, Korea.</p> <p>Q. When did you arrive there?</p> <p>A. 1997. I don't recall the month.</p> <p>Q. How long were you stationed there for?</p> <p>A. One year.</p> <p>Q. Where did you go next?</p> <p>A. After that went to Fort Leavenworth, Kansas.</p> <p>Q. What was your job at that time or assignment?</p> <p>A. At Fort Leavenworth?</p> <p>Q. Yes.</p> <p>A. I was a military police soldier conducting patrol work and also serving on a special reaction team.</p> <p>Q. Okay. And had that been the same role you were in at Camp Casey?</p> <p>A. Not entirely. At Camp Casey I was what you would call a combat MP. So we did some patrol, like typical law and order work. But then we did a lot of also support in the field for maneuver units. MPs have two different missions really. They have a law and order mission, but they also have a combat security and support role, you know, in combat operations. So it was kind of 50/50.</p>	<p>13</p> <p>Q. So is that different than law enforcement work?</p> <p>A. Different -- different than -- CID kind of has a dual mission of investigations and then protection also. So if you're assigned to that unit, you're not conducting investigations, you're doing personal security, Secret Service type work. During my time there, I wasn't conducting investigations, but I guess you would say it was law enforcement but a different mission.</p> <p>Q. But it's still within the Criminal Investigation Command?</p> <p>A. Yes, sir.</p> <p>Q. So is there any component of that job that involved investigative work?</p> <p>A. At protective services?</p> <p>Q. Yes.</p> <p>A. No, sir.</p> <p>Q. And when you were doing law enforcement work, was there any component of that that was protective services?</p> <p>A. Sometimes. We are typically tasked in the field to help support. So, you know, we may be asked to, Hey, this mission they need an agent to go out and support, because we have the training. We</p>

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<p style="text-align: right;">14</p> <p>1 need you to go out for a week at this location to 2 help provide support for this mission. But it's few 3 and far between, so.</p> <p>4 Q. Is it your understanding that CID has 5 responsibility for crime prevention, as well as 6 investigation?</p> <p>7 A. Yes.</p> <p>8 Q. Are there any other agencies or 9 departments within the Army that have that 10 responsibility?</p> <p>11 A. Are there any other agencies --</p> <p>12 Q. That are also responsible for crime 13 prevention and investigation.</p> <p>14 A. And for investigation. Not that I'm aware 15 of. I mean, the Army is a huge organization. And 16 each different activity or director it has a certain 17 responsibility to prevent fraud, waste, abuse, loss, 18 things like that. So everybody kind of has an 19 inherent responsibility in ensuring crime 20 prevention. Every unit is supposed to have what's 21 called a crime prevention officer. Whether infantry 22 unit or mechanized unit, to where they are 23 responsible for making sure that the key control 24 stuff is up to date. Everybody kind of shares a 25 responsibility. Our crime prevention activity is</p>	<p style="text-align: right;">16</p> <p>1 Detachment Commander.</p> <p>2 Q. What does that mean, Detachment Commander?</p> <p>3 A. Okay. So the Special Agent in charge is 4 the senior agent in the office responsible for, you 5 know, the oversight of investigative operations. At 6 Fort Stewart, every office has a military 7 designation. Such as Fort Stewart it was the 30th 8 Military Police Detachment parenthesis CID. As a 9 military organization we also have to have a command 10 authority. That person is responsible for the, you 11 know, personnel, logistics. Basically has command 12 authority over the soldiers that are assigned there. 13 So it's a dual-hatted position.</p> <p>14 Q. Did you have command over anyone other 15 than the other people who were in the CID office at 16 Fort Stewart?</p> <p>17 A. No. Just the people at the office.</p> <p>18 People assigned to the 30th.</p> <p>19 Q. Do you recall when you were promoted to 20 the Special Agent in Charge?</p> <p>21 A. I want to say it was May or June of 2010. 22 I don't recall.</p> <p>23 Q. So was it -- do you recall how long you 24 had been at Fort Stewart before that happened, even 25 if you don't recall the date?</p>
<p style="text-align: right;">15</p> <p>1 focused toward specific crimes that we are 2 responsible for investigating.</p> <p>3 Q. And is that the list of crimes that is on 4 AR195-2, Appendix B?</p> <p>5 A. Some of the crimes within that we have 6 specific responsibility for crime prevention. Such 7 as drug suppression, frauds, loss, like through 8 physical security, like general crimes, property 9 loss. We assist with that crime prevention effort, 10 yes, sir.</p> <p>11 Q. Is there any other group or department 12 within the Army that has responsibility for 13 investigating into murders or conspiracy to commit 14 murder?</p> <p>15 A. No, sir.</p> <p>16 Q. So how long were you in the protective 17 services job at Fort Belvoir.</p> <p>18 A. I would say almost five years. Yes, sir.</p> <p>19 Q. So until about 2010?</p> <p>20 A. Until about that, yes, sir.</p> <p>21 Q. What did you do next?</p> <p>22 A. Next I was stationed at Fort Stewart, 23 Georgia. I was initially assigned there as the 24 Assistant Special Agent in Charge, and then was 25 later appointed as Special Agent in Charge slash</p>	<p style="text-align: right;">17</p> <p>1 A. Maybe about six months. Give or take.</p> <p>2 Q. How long did you remain the Special Agent 3 in Charge of Fort Stewart?</p> <p>4 A. It was about four or five months. I would 5 say about four or five months.</p> <p>6 Q. What happened at the end of that time?</p> <p>7 A. So the -- there was an inbound Chief 8 Warrant Officer Don Boman who came into Fort Stewart 9 and I was identified for deployment. Once he came 10 in, we switched out, I want to say it was around 11 September 2011. And around that time once we did 12 our transition, then I started my pre-deployment 13 training.</p> <p>14 Q. Okay. I just want to give you the chance 15 to maybe help me understand or correct your 16 testimony. Because by my math you said you had been 17 a SAC for four to five months, it stopped in 18 September 2011, which is over a year after May or 19 June of 2010.</p> <p>20 A. I did not assume a command in 2010. No, 21 it was the same year. I apologize, it was the same 22 year.</p> <p>23 Q. Earlier in 2011?</p> <p>24 A. Earlier in 2011. Thank you.</p> <p>25 Q. And were you already the SAC by the time</p>

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<p>1 you heard the name Isaac Aguigui?</p> <p>2 <b>A. I believe I was. I think so.</b></p> <p>3 Q. And were you deployed at the end of your</p> <p>4 time at Fort Stewart?</p> <p>5 <b>A. At the time of my --</b></p> <p>6 Q. You said you were scheduled for</p> <p>7 deployment?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Did that deployment happen?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Where were you deployed?</p> <p>12 <b>A. Camp Buehring, Kuwait.</b></p> <p>13 Q. How long were you stationed there for?</p> <p>14 <b>A. We were there for almost 11 months.</b></p> <p>15 Q. And where were you stationed next?</p> <p>16 <b>A. Once I came back from deployment I cleared</b></p> <p>17 <b>out of Fort Stewart and was reassigned to Fort</b></p> <p>18 <b>Campbell, Kentucky. My initial assignment there was</b></p> <p>19 <b>with the 502nd CID Battalion where I served as</b></p> <p>20 <b>Assistant Operations Officer.</b></p> <p>21 Q. What does that job entail?</p> <p>22 <b>A. The 502nd CID Battalion is responsible for</b></p> <p>23 <b>six different CID offices, certain geographic areas</b></p> <p>24 <b>of responsibility. My responsibility there was to</b></p> <p>25 <b>assist the Operations Officer in the oversight of</b></p>	<p>18</p> <p>1 Q. So you're now the SAC of a single CID</p> <p>2 office; is that right?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Is that a step down from the position you</p> <p>5 were in before?</p> <p>6 <b>A. It's not necessarily a step down. As</b></p> <p>7 <b>Assistant Operations Officer -- the warrant officer</b></p> <p>8 <b>career model, if you will for CID, is to move from a</b></p> <p>9 <b>SAC office, a medium size office such as Fort</b></p> <p>10 <b>Stewart. And what they like to see in order to</b></p> <p>11 <b>progress CID leaders, is moving to a broadening</b></p> <p>12 <b>assignment. Such as working in a battalion</b></p> <p>13 <b>operations cell. And then grooming you, preparing</b></p> <p>14 <b>you to move toward a larger CID office to move over</b></p> <p>15 <b>to the SAC of that, which Fort Campbell is a larger</b></p> <p>16 <b>office. They try to do that broadening type of</b></p> <p>17 <b>assignment to prepare you for larger assignments.</b></p> <p>18 Q. About how big was the Fort Stewart, CID</p> <p>19 office?</p> <p>20 <b>A. I think at any given time I had about 12</b></p> <p>21 <b>agents assigned or available. I can't remember the</b></p> <p>22 <b>authorizations at that time. But it was right</b></p> <p>23 <b>around 12.</b></p> <p>24 Q. And that does not include MP investigators</p> <p>25 who assist you; is that right?</p>
<p>19</p> <p>1 investigative operations across each one of those</p> <p>2 offices. Just basically provide an oversight of</p> <p>3 those offices and their investigations.</p> <p>4 So we would go out and conduct visits of</p> <p>5 each one of those offices, doing quality control</p> <p>6 visits, case reviews and then assisting them with</p> <p>7 day-to-day requirements as well, as needed.</p> <p>8 Q. So are you senior to the SACs in those</p> <p>9 offices?</p> <p>10 <b>A. Most of them I was, yes.</b></p> <p>11 Q. When I say that, I meant actually in terms</p> <p>12 of the CID structure, not necessarily your rank.</p> <p>13 <b>A. CID structure, yes, sir.</b></p> <p>14 Q. What is your current rank?</p> <p>15 <b>A. Chief Warrant Officer 3.</b></p> <p>16 Q. And you have been at Fort Campbell,</p> <p>17 Kentucky ever since you were transferred there,</p> <p>18 correct?</p> <p>19 <b>A. That's correct.</b></p> <p>20 Q. Has your position changed at all since</p> <p>21 you've been there?</p> <p>22 <b>A. Yes, it has. 28 March of 2015 I assumed</b></p> <p>23 <b>command of the 31st Military Police Detachment CID,</b></p> <p>24 <b>also serving as the Special Agent in Charge of the</b></p> <p>25 <b>office.</b></p>	<p>21</p> <p>1 <b>A. That's correct. Nor does it include</b></p> <p>2 <b>civilian support personnel.</b></p> <p>3 Q. What kind of civilian support personnel</p> <p>4 would you have at Fort Stewart?</p> <p>5 <b>A. We had a Criminal Intelligence Coordinator</b></p> <p>6 <b>and then we also had an Investigative Support</b></p> <p>7 <b>Technician. Also had a Civilian Sexual Assault</b></p> <p>8 <b>Investigator assigned to my office at the time.</b></p> <p>9 Q. Criminal Intelligence Coordinator and --</p> <p>10 what was the second one, I'm sorry?</p> <p>11 <b>A. Investigative Support Technician or IST.</b></p> <p>12 <b>You may see it referred to as several different</b></p> <p>13 <b>things. IST or IOA, Investigative Operations</b></p> <p>14 <b>Assistant.</b></p> <p>15 Q. What is the responsibility of the CIC?</p> <p>16 <b>A. Criminal Intelligence Coordinator is</b></p> <p>17 <b>responsible for reviewing each investigation from --</b></p> <p>18 <b>not from an investigative standpoint but looking to</b></p> <p>19 <b>see what type of intelligence could be gleaned from</b></p> <p>20 <b>that. And then pulling that intelligence together</b></p> <p>21 <b>to see if it helps to inform other investigations,</b></p> <p>22 <b>identify trends, things like that. They also</b></p> <p>23 <b>compile statistics for the purpose of studies later</b></p> <p>24 <b>on. Annual surveys. Things of that nature.</b></p> <p>25 Q. So if there are two investigations going</p>

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<p style="text-align: center;">22</p> <p>1 on at the same time, it would be the CIC who might    2 sort of connect the dots between those two    3 investigations if there was an overlap?</p> <p>4 <b>A. It's possible.</b></p> <p>5 Q. Is there anybody else that has that    6 responsibility of putting things together between    7 investigations?</p> <p>8 <b>A. Sure. We all do. From the individual    9 agent to the Team Chief Supervisor to the Special    10 Agent in Charge to myself as the SAC.</b></p> <p>11 Q. Was the CIC stationed or -- he or she    12 actually located physically at the CIC offices?</p> <p>13 <b>A. She was.</b></p> <p>14 Q. Who was that during your time in Fort    15 Stewart?</p> <p>16 <b>A. Ms. Ellie Tolbert.</b></p> <p>17 Q. What does the Investigative Support    18 Technician do?</p> <p>19 <b>A. Basically administrative. Once the case    20 was closed, she would prepare copies, distribute    21 reports appropriately, and then she would also track    22 what we called DA4833, it's Commander's report of    23 disciplinary action.</b></p> <p>24 Once a case was closed, she would send the    25 4833 out to the commanders and the SJAs. And</p>	<p style="text-align: center;">24</p> <p>1 <b>A. Yes, sir.</b></p> <p>2 Q. Now, would a status report ever be issued    3 when there was no soldier that was titled yet?</p> <p>4 <b>A. Yes, sir.</b></p> <p>5 Q. Who does that go to then?</p> <p>6 <b>A. So it -- it all depends on who is under    7 investigation, what offense is being investigated,    8 and then what the -- what the status of that    9 investigation is. So in a typical scenario, let's    10 say if I -- can I use an example?</b></p> <p>11 Q. Please.</p> <p>12 <b>A. So for a hot urine analysis. Say a    13 soldier comes up hot for marijuana or cocaine, that    14 report would go to CID recipients, such as the    15 battalion or the group headquarters. U.S. Army    16 Crime Records Center would get a copy of any status    17 report that was sent. But then we would also    18 dispatch that to the soldier's command authority and    19 then to the supporting SJA. And then Garrison    20 leadership, as well. So they have an understanding    21 on what's going on in their installation. But,    22 again, every type -- it's all going to be case    23 dependent on who that report is going to go to.</b></p> <p>24 Q. Are status reports destroyed after they    25 have been created for any reason?</p>
<p style="text-align: center;">23</p> <p>1 whenever they took action or whatever action they    2 took, she would receive those reports back and    3 upload them to Crime Records Center.</p> <p>4 Q. Did you have direct access to the Crime    5 Records Center or CRC?</p> <p>6 <b>A. Could you explain what you mean by direct    7 access?</b></p> <p>8 Q. If something was uploaded to the Crime    9 Records Center, is that something you could pull up    10 on your computer?</p> <p>11 <b>A. No, sir. At the time when we were at Fort    12 Stewart -- I mean, we had an automated system then,    13 what we called ACI2. But that did not directly feed    14 into the Crime Records Center.</b></p> <p>15 When I was at Stewart, we would have to    16 mail a copy of the report or we would actually mail    17 the originals of everything to the CRC once we were    18 completed and they processed it and archived it.</p> <p>19 Q. So, for example, if you did a status    20 report on an investigation, where would that go?</p> <p>21 <b>A. So it would go to the CRC electronically,    22 and also electronically be sent to all the other    23 authorized recipients.</b></p> <p>24 Q. And that typically included a lot of    25 people in command for the soldier at issue?</p>	<p style="text-align: center;">25</p> <p>1 <b>A. Destroyed, do you mean -- can you clarify    2 what you mean by destroyed?</b></p> <p>3 Q. Are status reports deleted for any reason?</p> <p>4 <b>A. Not that I'm aware of.</b></p> <p>5 Q. So what if you titled someone for an    6 offense and later determined it was unfounded?</p> <p>7 <b>A. If someone were titled in a case and --    8 can I ask a clarifying question? When you say    9 titled, I just want to make sure I have the same    10 understanding you do. Do you mean somebody's name    11 is listed as the subject on that report?</b></p> <p>12 Q. Yes. Been through too many of these    13 depositions. I do have some knowledge. I apologize    14 if I'm not making that clear, since I'm asking some    15 basic questions, too.</p> <p>16 Someone is titled for an offense and it's    17 later determined to be unfounded, the status report    18 titling that person does not get deleted, though,    19 right?</p> <p>20 <b>A. No, sir.</b></p> <p>21 Q. Do you recall when you first heard about    22 this case that's involving the wrongful death    23 allegations?</p> <p>24 <b>A. I want to -- I want to say it was sometime    25 last month. I was contacted by an attorney out of</b></p>

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<p style="text-align: right;">26</p> <p>1 Fort Belvoir, U.S. Army, informing me that there was    2 an ongoing case and that I was probably going to be    3 contacted in the future for deposition.</p> <p>4 Q. Have you ever been asked to provide any    5 documents in connection with this case?</p> <p>6 A. No.</p> <p>7 Q. Do you have any documents in connection    8 with this case?</p> <p>9 A. No. Only the CASs that I reviewed from    10 the automated system. I did not carry anything with    11 me when I left Fort Stewart.</p> <p>12 Q. Did you use email to communicate about    13 this case? Not this case. Let rephrase that.</p> <p>14 Did you ever use email to communicate    15 about cases you were investigating while you were    16 stationed at Fort Stewart?</p> <p>17 A. I routinely communicate via email during    18 the investigative process and during the    19 administrative operation of the whole gambit.</p> <p>20 Q. What is the system that's in place, if you    21 know, for retaining or deleting email within CID?</p> <p>22 MS. JOHNSTON: At Fort Stewart?</p> <p>23 MR. BROOK: At Fort Stewart.</p> <p>24 THE WITNESS: At Fort Stewart, I'm not    25 aware of any system that was in place at Fort</p>	<p>1 installation to another. So they close it on their    2 end and then I get to another post and they have to    3 reactivate it. But the emails don't carry forward.    4 From the user level, as far as I know, they don't.</p> <p>5 Q. You don't have any knowledge about whether    6 at a server level there's something?</p> <p>7 A. No, sir, I don't.</p> <p>8 Q. Do you know if there's any rules or    9 protocols in place for investigators within CID as    10 far as email retention goes, when you should save    11 something to the file?</p> <p>12 A. Not that I'm aware of. We will    13 routinely -- I mean, there are certain things within    14 our regulation that talk about if you engage in    15 email traffic with say, the next of kin to a    16 deceased, or if you provide a Commander with a copy    17 of the CG memo, keep a copy of that email and post    18 it in the file. But I'm not aware of any directive    19 that any email that's sent regarding a case has to    20 be retained within a file.</p> <p>21 Q. So the emails you described that should be    22 kept, are those just put into the CAS or are those    23 actually printed out and put into the case file?</p> <p>24 A. Sometimes the CAS will detail that they    25 sent an email to so and so. But then depending</p>
<p style="text-align: right;">27</p> <p>1 Stewart on retaining emails. I'm unclear of    2 the question, sir.</p> <p>3 BY MR. BROOK:</p> <p>4 Q. Do you still have any of your old emails    5 from back when you were at Fort Stewart?</p> <p>6 A. No, sir.</p> <p>7 Q. Are emails automatically deleted in CID    8 email accounts?</p> <p>9 A. If I can clarify. When you say CID email    10 accounts, our email is the same as any other Army    11 unit. We go through the NEC. I don't know what    12 that acronym stands for, but basically there are    13 information guides for the post. That's how we --    14 that's a dot mil account.</p> <p>15 So ours is no different than any other    16 Army account where if you don't back it up or create    17 your own PST file, and then whenever you move and    18 that account is closed at Fort Stewart, and -- say,    19 for example, when I come to Fort Campbell, they    20 establish -- open up a new account under Fort    21 Campbell, it doesn't automatically repopulate.</p> <p>22 Q. You get a different account for each time    23 you have been PCS?</p> <p>24 A. My email name, the email address stays the    25 same, but they transfer the account from one</p>	<p>1 on -- if it's one of those emails that our    2 regulation requires to be printed out, then a copy    3 would be printed out and put in the file, as well.</p> <p>4 Q. Have you ever been asked to provide any    5 information with respect to this case before today?</p> <p>6 A. No, sir. I mean, other than my discussion    7 with Ms. Johnston before, but no.</p> <p>8 Q. Right. To your knowledge were there any    9 internal Army inquiries regarding Isaac Aguigui    10 after he was detained in December of 2011.</p> <p>11 A. Any internal Army inquiries?</p> <p>12 Q. Was there any attempt to try to    13 investigate how Isaac Aguigui got to where he was?</p> <p>14 A. I don't know, sir. I was deployed at the    15 time. And whenever I returned back from deployment,    16 I basically cleared out of Fort Stewart. I was    17 somewhat aware of everything that had transpired,    18 but in terms of anything above CID's investigation,    19 I'm not aware.</p> <p>20 Q. Were you involved at all in the    21 investigation of Isaac Aguigui or any of his    22 possible co-conspirators in crimes after you started    23 your deployment?</p> <p>24 A. No, sir.</p> <p>25 Q. Were you ever contacted to answer</p>

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<p style="text-align: center;">30</p> <p>1 questions or anything?</p> <p>2 <b>A. No, sir. I was contacted not to answer</b></p> <p>3 <b>questions, but one of my co-workers contacted me to</b></p> <p>4 <b>let me know what had occurred with the murders while</b></p> <p>5 <b>I was gone. But he just wanted to let me know.</b></p> <p>6 Q. Did you find out anything else about those</p> <p>7 murders at that time?</p> <p>8 <b>A. No, sir.</b></p> <p>9 Q. Did you make any inquiries?</p> <p>10 <b>A. Just from what I read in the media.</b></p> <p>11 Q. Are you familiar with what has happened</p> <p>12 with Isaac Aguirre since then in terms of being</p> <p>13 prosecuted for any crimes?</p> <p>14 <b>A. I am, yes, sir.</b></p> <p>15 Q. What are you aware of?</p> <p>16 <b>A. I'm aware that he was prosecuted for those</b></p> <p>17 <b>offenses and currently serving time for them.</b></p> <p>18 Q. Are you aware of his prosecution in</p> <p>19 connection with his wife's death?</p> <p>20 <b>A. I believe he was prosecuted for that as</b></p> <p>21 <b>well, but I'm not familiar with what the sentencing</b></p> <p>22 <b>was. And I don't know if it was concurrent with the</b></p> <p>23 <b>other case being tried or if it was separate, I'm</b></p> <p>24 <b>not aware.</b></p> <p>25 Q. So you were not asked for any information</p>	<p style="text-align: center;">32</p> <p>1 retain them or not. And I'm thinking about during</p> <p>2 that time at Fort Stewart. I can't remember what</p> <p>3 the requirement was for the retention of the</p> <p>4 Investigative Plan. It would stay with the hard</p> <p>5 copy of the file that has to be retained at the</p> <p>6 office for at least three years, or depending on the</p> <p>7 type of offense, it may have to be retained longer</p> <p>8 than that. But in terms of like an electronic</p> <p>9 retention at CRC, I'm not aware of any requirement</p> <p>10 to retain it then.</p> <p>11 Q. As a general matter, the hard copy case</p> <p>12 file has to be maintained for three years after a</p> <p>13 case closes?</p> <p>14 <b>A. As a general manner, yes, sir.</b></p> <p>15 Q. Is that something that everyone knows or</p> <p>16 is that a policy?</p> <p>17 <b>A. It's a regulatory requirement.</b></p> <p>18 Q. Do you know what the citation is for that</p> <p>19 by chance?</p> <p>20 <b>A. No, but -- no, I don't know.</b></p> <p>21 Q. No is a perfectly good answer. Just</p> <p>22 thought I would ask.</p> <p>23 What are the requirements or criteria that</p> <p>24 have to be met before someone can be titled for an</p> <p>25 offense?</p>
<p style="text-align: center;">31</p> <p>1 to help with that prosecution; is that right?</p> <p>2 <b>A. No, sir.</b></p> <p>3 Q. Did you ever use personal email for CID</p> <p>4 work?</p> <p>5 <b>A. No, sir.</b></p> <p>6 Q. Nowadays I have to ask. What is an</p> <p>7 Investigative Plan?</p> <p>8 <b>A. Investigative Plan is -- I'm glad you</b></p> <p>9 <b>asked that. It's something that is a living,</b></p> <p>10 <b>breathing document. It's a roadmap for the</b></p> <p>11 <b>investigator to use in order to try to resolve the</b></p> <p>12 <b>investigation in both a thorough and timely manner.</b></p> <p>13 <b>The Investigative Plan is -- it's fluid. It's</b></p> <p>14 <b>supposed to be used to identify investigative leads</b></p> <p>15 <b>as they come up. Prioritize them and then track</b></p> <p>16 <b>their completion or whether or not they are still</b></p> <p>17 <b>probative.</b></p> <p>18 Q. Is there always an Investigative Plan</p> <p>19 that's used in an open investigation?</p> <p>20 <b>A. There should be.</b></p> <p>21 Q. Is that something that's required?</p> <p>22 <b>A. For law enforcement reports, yes, sir.</b></p> <p>23 Q. Are there any requirements to retain those</p> <p>24 if an investigation is closed?</p> <p>25 <b>A. I don't know if there's a requirement to</b></p>	<p style="text-align: center;">33</p> <p>1 <b>A. Titling for an offense is an investigative</b></p> <p>2 <b>determination independent of just judicial review</b></p> <p>3 <b>that's based on credible information standard.</b></p> <p>4 Q. So is it something less than probable</p> <p>5 cause?</p> <p>6 <b>A. Yes, sir.</b></p> <p>7 Q. Credible information is the standard?</p> <p>8 <b>A. Yes, sir.</b></p> <p>9 Q. So that's a pretty flexible standard?</p> <p>10 <b>A. It is, yes, sir.</b></p> <p>11 Q. Now am I right in understanding a lot of</p> <p>12 CID investigative work involves getting sworn</p> <p>13 statements from soldiers?</p> <p>14 <b>A. Yes, sir.</b></p> <p>15 Q. And CID agents are all authorized to</p> <p>16 administer oaths?</p> <p>17 <b>A. Yes, sir.</b></p> <p>18 Q. You could have sworn yourself in here</p> <p>19 today?</p> <p>20 <b>A. I don't know about that.</b></p> <p>21 Q. How common is it to get a sworn confession</p> <p>22 from a soldier that you're investigating?</p> <p>23 <b>A. I mean, we routinely obtain confessions</b></p> <p>24 <b>and admissions. And I make a distinction between</b></p> <p>25 <b>the two. Because even though we may obtain sworn</b></p>

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<p style="text-align: right;">34</p> <p>1 statements that have admissions of guilt on there,    2 the confession I see it in a different category to    3 where specific type intent offenses. I don't have    4 any statistics I can pull off the top of my head we    5 routinely get this percentage of, but it's a fairly    6 common occurrence.</p> <p>7 Q. So you would say maybe the difference in a    8 confession, the person knows they committed a crime    9 and an admission, they might not know they are    10 admitting to a crime?</p> <p>11 A. That's fair.</p> <p>12 Q. Do you consider a sworn admission to be    13 credible information?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know anyone who disagrees with that    16 point of view?</p> <p>17 MS. JOHNSTON: Objection. Calls for    18 speculation.</p> <p>19 BY MR. BROOK:</p> <p>20 Q. One thing I did not mention. Unless    21 you're instructed not to answer -- there will be    22 objections just for the record, because there's no    23 Judge to rule on them.</p> <p>24 Please go ahead and answer.</p> <p>25 A. Can you state the question again, please?</p>	<p>1 Q. Is credible information enough information    2 or sufficient standard to detain a soldier?</p> <p>3 A. To detain a soldier?</p> <p>4 Q. Yes.</p> <p>5 A. Yes. For detention, yes.</p> <p>6 Q. How long can you detain someone based on    7 credible information?</p> <p>8 A. For a reasonable amount of time.</p> <p>9 Q. And how do you determine what the    10 reasonable amount of time is?</p> <p>11 A. It's determined -- that determination is    12 made on, you know, how long the interview takes.    13 How long it takes to do processing. It's not to    14 hold them any longer than what's absolutely    15 necessary in order to conduct an interview and/or    16 process that person.</p> <p>17 Q. So that's different than putting someone    18 in, for example, pretrial detention?</p> <p>19 A. Yes, sir.</p> <p>20 Q. What is the standard you need to meet in    21 order to detain someone more for safety reasons    22 based on your belief that probable cause exists for    23 a crime?</p> <p>24 MS. JOHNSTON: You mean CID detain    25 someone?</p>
<p style="text-align: right;">35</p> <p>1 MR. BROOK: Sure. Can you read it back?</p> <p>2 MS. JOHNSTON: Same objection.</p> <p>3 (Requested portion read.)</p> <p>4 THE WITNESS: I don't know anybody that    5 disagrees with it.</p> <p>6 BY MR. BROOK:</p> <p>7 Q. Is credible information something that has    8 to be admissible in court in your view?</p> <p>9 MS. JOHNSTON: Object as to form.</p> <p>10 A. No. Credible information is in my opinion    11 a subjective determination based upon all available    12 information known to that person at the time.</p> <p>13 Q. Are there any regulations or publications    14 that help to explain what credible information is or    15 how to apply the standard?</p> <p>16 A. Yes.</p> <p>17 Q. And what regulation is that?</p> <p>18 A. CID regulation 195-1.</p> <p>19 Q. Do you know about how much of that, in    20 terms of pages, is devoted to the issue of credible    21 information standards?</p> <p>22 A. I know that credible information is -- a    23 definition is provided within the definitions    24 appendix, but I don't know how many times it's    25 referred to within the regulations.</p>	<p>1 BY MR. BROOK:</p> <p>2 Q. Sorry. Let me rephrase the question.</p> <p>3 What is the standard that CID needs in    4 order to detain someone for reasons other than just    5 questioning?</p> <p>6 A. CID -- to the best of my knowledge and    7 ability to answer that question, CID does not    8 normally detain anyone aside from or outside of the    9 need to either question them, execute a search or to    10 process them. Any other detentions are outside of,    11 you know, CID's normal operations.</p> <p>12 Q. Those other detentions are made by the    13 command, is that correct, for the individual    14 soldier?</p> <p>15 A. It could be, yes, sir.</p> <p>16 Q. Who else could make those decisions?</p> <p>17 A. Usually the command can make those    18 decisions based on, you know, their discussions with    19 the Staff Judge Advocate or another competent law    20 enforcement authority could certainly. I'm sorry,    21 can I add?</p> <p>22 Q. Please.</p> <p>23 A. Military police also have the authority to    24 detain soldiers, like you said earlier, for safety    25 reasons or when effecting a stop or this or that.</p>

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<p style="text-align: center;">38</p> <p>1     And then general military authority by an officer, a  2     non-commissioned officer if they witnessed something  3     that happened, they have the authority to, you know,  4     hold that soldier for safety purposes or questioning  5     until law enforcement can arrive. But that's my  6     understanding of detention.</p> <p>7     Q. Is CID, or anyone else in the Army as far  8     as you know, able to detain a soldier while you are  9     investigating that soldier to determine whether to  10    press charges or prefer charges?</p> <p>11    A. I mean, the command has the authority to  12    place a soldier in confinement if they believe that  13    there is, you know, probable cause that the soldier  14    committed an act and that there's information to  15    believe that they should be in confinement. But  16    when we are talking about detention and confinement,  17    I don't know if you're referring to both of those  18    synonymously.</p> <p>19    Q. In terms of terminology, confinement is  20    more long term than detention?</p> <p>21    A. Yes, sir. That's the way I see detention  22    and confinement.</p> <p>23    Q. I'd like to ask you if you remember people  24    from the Fort Stewart's office; and if so, what you  25    remember about them. Andrew Dale?</p>	<p style="text-align: center;">40</p> <p>1     recall?</p> <p>2     A. One of them I remember his last name was  3     Fox.</p> <p>4     Q. Anyone else?</p> <p>5     A. I can't remember anyone else. Because  6     they would typically come in for shorter periods of  7     time. Some would come for a year. Some may just  8     come for a month or so.</p> <p>9     Q. Were there differences in terms of the  10    capabilities between reserve agents and your regular  11    agents?</p> <p>12    A. Can you -- is it possible to clarify what  13    type of differences?</p> <p>14    Q. Well, were there any differences in terms  15    of the kind of work that they did or their training  16    or experience?</p> <p>17    A. The reserve agents typically differed from  18    the active duty agents in that they weren't always  19    familiar with or comfortable with our automated  20    system. Some of our report writing. Some of the  21    isms in CID they are typically administrative. But  22    investigative-wise, they are all trained to the same  23    standard. And a lot of our reservists are actually  24    very well experienced in investigations in law  25    enforcement, depending on some of them served as</p>
<p style="text-align: center;">39</p> <p>1     A. Yes, sir.</p> <p>2     Q. What was his role?</p> <p>3     A. He was the Drug Suppression Team Chief.</p> <p>4     Q. Did he have any other role while you were  5     there?</p> <p>6     A. Not while I was there, no, sir.</p> <p>7     Q. Okay. Cassandra Ivory.</p> <p>8     A. Yes. She was a Team Chief, as well.</p> <p>9     Q. Is that for economic crimes?</p> <p>10    A. It was for economic crimes. I think she  11    also oversaw some general crimes, also.</p> <p>12    Q. Was that because -- just a need?</p> <p>13    A. Need, yes, sir.</p> <p>14    Q. Is it correct that the Fort Stewart CID  15    office was relatively short staffed while you were  16    there?</p> <p>17    A. Yes, sir.</p> <p>18    Q. Did you have to borrow some people from  19    other offices to fill --</p> <p>20    A. We would have reserve agents come in and  21    augment us from time to time. I don't remember if  22    we ever got any agents from other offices to come  23    help. But reservists, yeah, we activated  24    reservists.</p> <p>25    Q. Who are some of the reservists that you</p>	<p style="text-align: center;">41</p> <p>1     cops or detectives in other jurisdictions. Some of  2     them have careers outside of law enforcement, but  3     they are trained to the same standard.</p> <p>4     Q. Did you have the opportunity to personally  5     observe Agent Fox's work when you were there?</p> <p>6     A. I did. But, to be honest with you, I  7     don't -- I don't remember a lot about his work. I  8     can't even remember how long he was there to be  9     honest. So -- but, yes, I did.</p> <p>10    Q. Did you ever observe any problems with the  11    work that he was performing?</p> <p>12    A. Again, I can't remember any specific  13    issues with Agent Fox.</p> <p>14    Q. Did you have problems with any of your  15    agents not performing their duties when you were  16    there?</p> <p>17    A. Not that I can remember. I mean, there's  18    always, you know, people make mistakes or people  19    need assistance or correction in certain areas.  20    But, you know, consistent poor performance, I don't  21    remember any issues -- having any issues with any  22    agents when I was there.</p> <p>23    Q. Did you ever put a flag on anyone under  24    your command while you were at Fort Stewart?</p> <p>25    A. I did on a support soldier that I had.</p>

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1       **She was a supply soldier, but she did not have**  
 2       **anything to do with investigations.**

3       Q. So no one having to do with  
 4       investigations?

5       **A. I'm trying to remember. Not that I can**  
 6       **remember. Not when I was there as the SAC.**

7       Q. Do you recall an MP Investigator Devon  
 8       Spencer?

9       **A. Spencer. Yes, sir, I remember him.**

10      Q. What do you remember about him?

11      **A. He was the drug suppression NCOIC, yes.**

12      Q. That means non-commissioned officer?

13      **A. Non-commissioned Officer in Charge, right.**

14      I have a correction. I do recall. I had a DST  
 15      Investigator by the last name of Johnston. When you  
 16      mentioned DST, it jogged my memory. I don't recall  
 17      if he was flagged or not, but I removed him from  
 18      investigative duties for allegations of misuse of  
 19      his DST credentials.

20      Basically he got pulled over on a traffic  
 21      stop for being on a cell phone and whipped out his  
 22      credentials in order to try to get out of a ticket.  
 23      So I relieved him from investigative duties.

24      Q. When was that?

25      **A. Shortly after I took over. So I want to**

42

1       Q. Was Justin Kapinus one of those more  
 2       senior agents?

3       **A. Yes, sir.**

4       Q. Would you say he was one of the top agents  
 5       you had there?

6       **A. Yes, sir.**

7       Q. Anyone you put above him?

8       **A. That would have been hard pressed at the**  
 9       **time. He's a good solid investigator and he was a**  
 10      **good Team Chief, also. So I thought very highly of**  
 11      **him.**

12      Q. When did you first hear the name Isaac  
 13      Aguigui, if you can recall?

14      **A. I believe that name came up during**  
 15      **conversation with Agent Dale when he was on the drug**  
 16      **team. They were investigating, and I don't remember**  
 17      **how -- the genesis of it. But they were**  
 18      **investigating some possible drug distribution or**  
 19      **drug incident and uncovered this alleged conspiracy.**  
 20      **So it was during that conversation that I remember**  
 21      **first hearing his name.**

22      Q. Okay. What did you hear about him? What  
 23      do you recall hearing about him?

24      **A. That he had information regarding an**  
 25      **alleged conspiracy.**

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1       **say it was May or June of that year. The joys of**  
 2       **command.**

3       Q. Did you ever while you were at Fort  
 4       Stewart, change personnel who were working on a case  
 5       because you wanted to have someone different do the  
 6       investigative work?

7       **A. I'm sure I did.**

8       Q. Can you think of any reason other than  
 9       making mistakes during an investigation as to why  
 10      you would remove someone from an investigation and  
 11      replace that person with someone else?

12      **A. As a matter of practice, you mean?**

13      Q. Yes.

14      **A. Sure. Sometimes -- depending on the --**  
 15      **again, with each case being different, having**  
 16      **different circumstances or nuances, sometimes I'll**  
 17      **reassign a case because that agent who had that case**  
 18      **is overwhelmed with other cases that I can't**  
 19      **reassign those and this case needs attention. So I**  
 20      **want to make sure that it goes over to someone who**  
 21      **can afford a little bit more time and energy into**  
 22      **it. Or it could be I want a more senior agent to**  
 23      **investigate that case just because they have got**  
 24      **more experience and be able to navigate it more**  
 25      **successfully.**

43

1       Q. So his name came up as a witness; is that  
 2       right?

3       **A. I don't recall how his name came up, in**  
 4       **what capacity, but I remember it was because of that**  
 5       **case.**

6       Q. Now, were you aware at that time that  
 7       Isaac Aguigui had had prior incidents with drugs or  
 8       alcohol?

9       **A. I wasn't aware at that time. Because I --**  
 10      **as the SAC, I did not routinely get involved in the**  
 11      **day-to-day operations of the Drug Suppression Team.**  
 12      **Mr. Dale would see it. So he would see, you know,**  
 13      **common type offenders come through. People that he**  
 14      **would recognize or this or that. But the name did**  
 15      **not ring a bell with me when we first had this**  
 16      **conversation.**

17      Q. How much do you recall about the alleged  
 18      conspiracy that you referred to?

19      **A. So what I remember is that Agent Dale had**  
 20      **told me, Hey, we have got information about some**  
 21      **soldiers that may have conspired to rip off this**  
 22      **off-post drug dealer, a civilian. That there was**  
 23      **talk about, you know, having a shotgun and possibly**  
 24      **going in and, you know, taking him out and then**  
 25      **taking the drugs and/or money.**

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13 (Pages 46 to 49)

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1           So I told him -- I told Dale, I want this  
 2 investigation to stay with the Drug Suppression Team.  
 3 Again, Agent Dale was one of my more senior agents  
 4 at the time. And because of the drug nexus, I said,  
 5 You guys are going to continue to investigate this  
 6 conspiracy, too, because I don't want to segregate  
 7 the two. I want this to stay focused and within the  
 8 same people that have the most amount of information  
 9 on it. I told him to execute, go forward.

10          Q. And do you recall how well that  
 11 investigation got off at the beginning?

12          A. I remember that they were -- they  
 13 conducted several different interviews. And I  
 14 believe they -- Aguigui was one of those people that  
 15 they interviewed. And they grape-lipped, obtained a  
 16 statement from him where admissions were made. And  
 17 then I have a hard time remembering how that case  
 18 progressed. But I do remember that they were able  
 19 to kind of get at the fact that Aguigui is part of  
 20 this conspiracy.

21          Q. Do you recall what happened after they got  
 22 at that fact?

23          A. I believe we generated a status report  
 24 titling him as a subject and doing those normal  
 25 things. Notifying the chain of command. Back

1           A. I don't know. I assume Agent Dale and,  
 2 you know, his investigators, but I can't remember  
 3 what other agents were involved. I think it would  
 4 be safe for me to assume Agent Greene, who was my  
 5 ASAC, would have been involved, also. Because a lot  
 6 of the -- I would typically do more in-depth and  
 7 track -- obviously all of our death investigations,  
 8 SIR, Serious or Significant, trying to minimize  
 9 acronyms here. But some of our SIR, SSI, sexual  
 10 assaults. And I know that I was involved in  
 11 reviewing this one, but I believe Agent Greene did,  
 12 also.

13          Q. Do you recall having any particular  
 14 concerns about the investigation into this alleged  
 15 conspiracy?

16          A. I was obviously concerned about a  
 17 conspiracy, you know, to commit murder, that's a  
 18 significant offense. So I was concerned generally  
 19 as, you know, as an agent, that we have got a  
 20 soldier conspiring here. But concerns with the  
 21 investigation itself, I can't remember any.

22          Q. Okay. So the concerns were more about the  
 23 potential that the offense would be carried out?

24          A. Sure, sure.

25          Q. So is it correct that you took maybe more

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1 briefing them. Your soldier, we have information we  
 2 believe your soldier is involved with this, and  
 3 providing them with that report.

4           Q. Did you speak with anyone in command about  
 5 Aguigui?

6          A. I don't remember.

7          Q. Were charges brought against Aguigui?

8          A. I don't know.

9          Q. Do you know what happened after you titled  
 10 him with respect to this charge in particular?

11          A. With respect to --

12          Q. I'm sorry. With respect to the conspiracy  
 13 investigation after he was titled.

14          A. I mean, I believe the investigation  
 15 continued, but I don't -- I don't have a whole lot  
 16 of knowledge on what occurred after that.

17          Q. Do you recall any problems with the  
 18 investigation after that point?

19          A. None that I'm aware of.

20          Q. Who besides Agent Dale was involved in  
 21 that investigation, if you recall?

22          MS. JOHNSTON: From CID?

23          BY MR. BROOK:

24          Q. From anyone, who was involved in the  
 25 investigation?

1 of an interest in this drug-related case than others  
 2 because of that conspiracy to commit murder tie-in?

3          A. Yes, sir.

4          Q. Did you review every like drug possession  
 5 or use case that came through your office?

6          A. No, sir.

7          Q. Those are some of the -- are they  
 8 considered non-SSI cases?

9          A. Yes, sir.

10          Q. How did you first become involved in the  
 11 investigation regarding Sergeant Aguigui, Isaac  
 12 Aguigui's wife?

13          A. All right. So I don't remember who I was  
 14 called by. It was either the Duty Agent or the Team  
 15 Chief. I was informed that the soldier was found  
 16 deceased in her residence. That they were en route  
 17 to the scene. Started going through the normal  
 18 process. Make sure the Team Chief is here. Blah,  
 19 blah, blah.

20          So I got dressed. Got in the truck.

21          Started leaving my house. And then I was called  
 22 while I was en route and was given the name and I  
 23 automatically recognized it.

24          Q. Okay. What did you do when you recognized  
 25 the name?

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14 (Pages 50 to 53)

<p>50</p> <p>1       A. Proceeded as normal. I believe I 2       contacted Agent Dale as well, because I knew that he 3       was familiar with Aguigui and that he would be an 4       invaluable source of knowledge, you know, if there 5       was any type of -- any type of wrongdoing. 6       Again, we -- the initial call that we got 7       was that -- that Sergeant Aguigui was found 8       unresponsive -- that he had contacted 911 about 9       finding her unresponsive in the residence. That the 10      MPs showed up. He was hysterical, had to be 11      restrained. So it was kind of a mess when our 12      agents first got there, you know, just with the 13      emotion of what the MPs were dealing with at the 14      time. 15       But I contacted Agent Dale, because I 16       knew, Hey, if we -- we look at every death 17       investigation as if it's a homicide from the very 18       beginning and then make the determination on how the 19       person died as a rule of exclusion. Ideally once 20       you rule out any type of criminality, then we can 21       fall on whether it was natural, accidental or 22       suicide. That's kind of why I proceeded that way. 23       Contacted Agent Dale. I wanted his 24       knowledge of Aguigui to be able to help inform the 25       investigative process.</p>	<p>52</p> <p>1       confusing at times. 2       Q. As we have learned in this case. Did you 3       have any involvement in the actual investigative 4       work for the Sergeant Aguigui homicide 5       investigation? 6       A. So my involvement during the preliminary 7       phase, as I remember, I responded to the scene, 8       which I'm required to, and will do on any death 9       investigation, to ensure that the scene is being 10      processed adequately. That roles and 11      responsibilities are assigned. That evidence is 12      being identified and collected correctively and give 13      kind of overall guidance. 14       So aside from -- the only other -- the 15      normal duties of a SAC in terms of making certain 16      coordinations, conducting reviews, providing 17      guidance, the only investigative activity I can 18      recall in that. I believe I had a conversation with 19      a mother, I think it was a mother of one of 20      Aguigui's friends that called with concern -- she 21      had concern that Aguigui may have bought some type 22      of medicine or something to cause -- to cause 23      Sergeant Aguigui to have an allergic reaction. 24       Q. When was that call? 25       A. I want to say it was a few days after,</p>
<p>51</p> <p>1       Q. Was Dale actually assigned to the case in 2       any capacity? 3       A. I don't think he was. 4       Q. Do you recall whether you ever saw his 5       name mentioned in the CAS when you reviewed it? 6       A. I don't recall. 7       Q. Did you ask Dale to speak with anyone in 8       particular that was working the homicide 9       investigation? 10       A. I think I did. I think I told him, plug 11      in with Agent Kapinus or Agent Fox. Yeah. 12       Q. Beside agents Kapinus and Fox, do you 13       recall anyone else who was heavily involved in 14       investigating it while you were at Fort Stewart? 15       A. I know Agent Mahon was involved in at 16       least the preliminary or during the crime scene. I 17       don't remember who else was really heavily involved. 18       Q. Do you know the name of Elizabeth Dale? 19       A. Sure. Yes, sir. 20       Q. Was she also involved in that? 21       A. If her name was in the case, I would have 22       to say so. 23       Q. Was there any relation between her and 24       Andrew Dale? 25       A. No, no relation. Coincidental and very</p>	<p>53</p> <p>1       something like that, yeah. 2       Q. A few days after the death? 3       A. Uh-huh. 4       Q. Did you conduct any other interviews? 5       A. Not that I'm aware of. 6       Q. You spoke with Isaac Aguigui on several 7       occasions, correct? 8       A. I think so. 9       Q. Those were not interviews, right? 10       A. No. 11       Q. What were the purpose of those 12       conversations? 13       A. What we call CLOers. Casualty Liaison 14       Officers. So CID has a requirement that the SAC 15       perform the role of a causal liaison for the 16       investigative process. So we are required to keep 17       the primary next of kin informed on the progress of 18       the investigation. But not necessarily conduct 19       interviews of them. 20       Q. Is it something that you've done in other 21       cases where you have conducted a CLO interview or -- 22       A. Brief. 23       Q. -- CLO brief with someone who is also a 24       person of interest in the investigation? 25       A. I'm trying to think. I feel like I have</p>

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15 (Pages 54 to 57)

<p style="text-align: center;">54</p> <p>1       done that before, but I can't remember a specific 2       example, no. 3       Q. Is it fair to say it's relatively unusual? 4       A. Yes, sir. 5       Q. Were you involved in preparing the 6       Investigative Plan for this investigation? 7       A. I don't remember if I was involved in 8       preparing the Investigative Plan, but I certainly 9       would have been involved in reviewing it. Making 10      sure that no leads had been missed or trying to help 11      tailor it. That's typically what I would do in any 12      investigation, I review -- any preliminary that I 13      review is review that Investigative Plan. Make sure 14      that it's adequate. Make sure they are on the right 15      track to identify the right type of leads. 16       Q. I'm showing you what's been previously 17      marked as Exhibit 25. Do you recognize that 18      document? 19       A. I do. 20       Q. And what is it? 21       A. It's an Investigative Plan for CID ROY 22      279-11-CID093. 23       Q. Okay. And this indicates that the subject 24      victim was Deidre Aguigui, correct? 25       A. That's what it says here.</p>	<p style="text-align: center;">56</p> <p>1       earlier when we were talking about Investigative 2       Plans, it's a living, breathing document. And 3       because every case is fluid and because a case will 4       sometimes be assigned to a different agent, they may 5       keep the Investigative Plan that they have but then 6       add to it or then supplement it with additional 7       leads of their own that they identify. 8       Q. Is that something that happened in your 9       experience where something will be put on the 10      Investigative Plan to do but they decide not to do 11      it? 12       A. Uh-huh. Yes. 13       Q. What happens to that? What happens to 14      that, does the Investigative Plan get updated in 15      some way to reflect that? 16       A. It can. 17       Q. So let me ask you about, for example, on 18      the page one when there's a date on the right, am I 19      correct in saying that means that was completed on 20      that date? 21       A. That typically means when that activity 22      was completed. 23       Q. And what does it mean to you to see sort 24      of a line through the box next to, obtain MP report? 25       A. What I take that to mean when I see the</p>
<p style="text-align: center;">55</p> <p>1       Q. And it says undetermined death? 2       A. Yes, sir. 3       Q. And the date in the upper left, does that 4       mean that's when the date when all of this was typed 5       up? 6       A. That's usually -- the date in the upper 7       left is usually the day that the IP is developed. 8       Q. So it's not the date of the -- 9       A. The date of the offense. Date of 10      notification or date of events. 11       Q. I see it continues on the second page and 12      it looks like it's then started fresh after that on 13      page three; is that right? 14       A. On page three. The page three that I'm 15      looking at appears to be the same leads. 16       Q. There's different handwriting? 17       A. Yes, sir. 18       Q. And on page four, that seems to be the 19      continuation from page three; is that right? 20       A. It seems that way, yes, sir. 21       Q. Is this typical to see sort of the same 22      but somewhat different -- similar but different 23      Investigative Plans, you know, right next to each 24      other in a case file? 25       A. It's not unusual, sir. As I stated</p>	<p style="text-align: center;">57</p> <p>1       line through is that it's either no longer an issue, 2       it's been resolved, or a supervisor had determined, 3       Hey, that's not required. 4       Q. What about a blank space? 5       A. When I see a blank space on an IP, I take 6       that to mean that hadn't been done yet. 7       Q. And there's nothing to indicate when 8       there's a blank space and no line, that that's 9       something they no longer intend to do; is that 10      right? 11       A. Not from just reading this Investigative 12      Plan, no, sir. 13       Q. Now, if something was no longer part of 14      the Investigative Plan, would you expect to see that 15      noted on the Investigative Plan? 16       A. Me, personally -- are you asking me 17      personally or a requirement? 18       Q. Well, let me ask you that. Is there a 19      requirement to note that on the Investigative Plan? 20       A. Not that I'm aware of. 21       Q. Is there a requirement to note that in the 22      CAS? 23       A. If the case is being closed, what we call 24      a final C, meaning that there are additional leads 25      being done, but they are no longer required because</p>

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16 (Pages 58 to 61)

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1 we have, you know, been able to prove or disprove  
 2 either way, then there's a requirement to list those  
 3 additional leads at the conclusion of the case in  
 4 the CAS.

5 Q. Now, having looked at this, do you recall  
 6 now whether you were involved in preparing this or  
 7 just reviewing it?

8 A. Probably just reviewing it, sir. I'm sure  
 9 I had some level of involvement in helping develop  
 10 it, because I'm sure I gave guidance. We are going  
 11 to make sure that this is in the IP, make sure that  
 12 is here. But in terms of sitting down with the  
 13 person doing that, probably not. I probably gave  
 14 guidance and they acted on that.

15 Q. I want to direct your attention to the  
 16 middle of page one. There are a couple of items  
 17 there that are blank that are also blank on page  
 18 three. Those are the conduct candid interviews of  
 19 D. Aguigui's unit and I. Aguigui's unit. Do you  
 20 recall any discussions about whether canvas  
 21 interviews should be conducted in connection with  
 22 the Deidre Aguigui investigation?

23 A. I don't recall discussions about canvas --  
 24 let me rephrase that.

25 I recall discussions about canvas

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1 discuss their line of reasoning. If I agree with  
 2 it, good to go.

3 Q. In you don't agree with it, can they just  
 4 ignore the requirement?

5 A. If they have been given guidance and don't  
 6 do that, are they allowed to just ignore it, is that  
 7 the question?

8 Q. Yes.

9 A. No, not without some type of overriding  
 10 reasoning or discussion. I mean, it's -- the Case  
 11 Agent often has the most intimate knowledge of that  
 12 case and the intricacies of it with each case being  
 13 different and fluid. You know, the Case Agent and  
 14 Team Chief will often discuss leads. And this is  
 15 just what I see typically. The Case Agent and Team  
 16 Chief may discuss certain leads and the Team Chief  
 17 is giving them guidance, but without going back to  
 18 the SAC. And I'm just using my own experience as an  
 19 example here where I will see something -- so let's  
 20 say I'm reviewing a case whenever it's getting ready  
 21 for closure. And I see on there, Hey, I identified  
 22 this as a potential lead, you know, a couple of  
 23 months ago, you guys haven't done that yet. Well,  
 24 Chief, it's because we found out x, y or z but we  
 25 just never got back with you to explain that to you.

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1 interviews of the neighborhood surrounding the death  
 2 scene at the time. Absolutely. I don't recall  
 3 additional discussion on canvas interviews aside  
 4 from that.

5 Q. Are canvas interviews of a person of  
 6 interest's unit something that is standard practice?

7 A. I wouldn't say standard practice. It's  
 8 one lead that could assist, but it's all depending  
 9 on the situation and where the investigation is at  
 10 that point. You know, it's certainly a lead to  
 11 consider, but it's not a though shalt, if you will.

12 Q. If you as the SAC tell someone to conduct  
 13 canvas interviews in a case and that person is below  
 14 you --

15 A. Sure.

16 Q. -- does that person have to go do that if  
 17 you tell them to do it?

18 A. Yes. But if, if, there's a reason why  
 19 they think that it shouldn't be done, then we have  
 20 that conversation. I'll often put direction in a  
 21 case file to, Hey, make sure that you do x, y and z,  
 22 and that Team Chief or that agent will come, Hey,  
 23 Chief, I saw you directed this, but here's a reason  
 24 why I don't think we need to do this. But I think  
 25 we should, but we need to wait. And we would

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1 Okay. I understand. It's not done in a malicious  
 2 or a way to just completely disregard guidances,  
 3 because it was no longer relevant or they did not  
 4 think it was relevant anymore.

5 Q. Now, you said it wasn't standard practice  
 6 to conduct canvas interviews of a unit for someone  
 7 who is a person of interest. But is it something  
 8 that is usual?

9 A. I wouldn't say that it's a standard or  
 10 that it's unusual. It's a lead. It's something --  
 11 you know, there's two types of -- two types of  
 12 general evidence that we also consider in any  
 13 investigation; there's physical evidence and  
 14 testimonial evidence. And, you know, we try to  
 15 identify all those leads within both categories that  
 16 should be considered. Doesn't mean they are always  
 17 going to be done, but we should at least consider  
 18 them.

19 Q. So that I understand it. When you talk  
 20 about -- when this document, for example, talks  
 21 about canvas interviews of a soldier's unit, how  
 22 many people are we talking about getting canvased  
 23 there?

24 A. The term unit is ambiguous. Because  
 25 obviously someone is assigned to a 4,000 soldier

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17 (Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 brigade or someone is in a squad. Usually what that    2 means is those people that are in the unit with,    3 that they are closer to, who would have more    4 information in terms of their demeanor at work, but    5 also maybe their demeanor and behavior outside of    6 work. So usually it's a squad or a platoon size.</p> <p>7 Q. Is it possible that somebody in CID might    8 have seen this part of the Investigative Plan and    9 thought, I'm not going to interview a thousand    10 people?</p> <p>11 MS. JOHNSTON: Objection. Calls for    12 speculation.</p> <p>13 A. I highly doubt that any agent who saw that    14 on there, thought, darn, I've got to interview a    15 thousand people. If I received this as a Case Agent    16 and said, Conduct canvas interviews of Aguigui's    17 unit, I would interpret that to mean those people    18 that that they work with on a regular routine base.</p> <p>19 Q. For example, Aguigui was assigned to    20 something called the S-2 section or unit, would that    21 be the place to start?</p> <p>22 A. If I were to be given that guidance to    23 interview Aguigui's unit, I would start with those    24 people that she worked with on a regular and routine    25 basis.</p>	<p>1 And it was short in duration. Usually a minute or    2 so. Because I made the decision that I'm not going    3 to provide in-depth details about the status of the    4 investigation, because we had not ruled him out.    5 Because we did not even know what the cause of death    6 was yet. And we had not ruled him out. So I    7 decided I was only going to brief him insofar to    8 tell him the investigation is still ongoing and the    9 autopsy has or has not been completed. So they were    10 very brief interactions, not really long enough    11 to develop any suspicions other than what I had    12 already formed about him.</p> <p>13 Q. If he made any remarks that you thought    14 were suspicious, is that something you would have    15 noted in the CIS?</p> <p>16 A. If he made any remarks that I felt were    17 suspicious, is that what you're saying?</p> <p>18 Q. Yes.</p> <p>19 A. It's possible that I would have put it    20 into the CAS.</p> <p>21 Q. Can you think of any reason, besides    22 making remarks for a suspicious, as to why you would    23 quote things that Isaac Aguigui said to you in the    24 CAS?</p> <p>25 A. I don't know. Without the benefit of</p>
<p style="text-align: right;">63</p> <p>1 Q. As you sit here today, can you think of    2 any reason or recall any reason why canvas    3 interviews, such as those mentioned on this    4 Investigative Plan, were not conducted in this case?</p> <p>5 A. Without the benefit of having the entire    6 case to look at, I don't know.</p> <p>7 Q. When you spoke with Isaac Aguigui as part    8 of the CLO brief, did you notice any behavior that    9 you thought was suspicious?</p> <p>10 A. Can you further define what you mean by    11 suspicious behavior?</p> <p>12 Q. I would say whatever you define as. Was    13 anything about his behavior something that made you    14 more or less suspicious about whether he was    15 involved in --</p> <p>16 A. My interactions with Aguigui through these    17 CLO briefs were either in passing or telephonic. By    18 in passing, you know, as he was there at the office    19 being interviewed during the preliminary phase of    20 this. I would have briefly interacted with him,    21 explained to him who I was, what my role was and    22 kind of what the process is going to be in general    23 terms.</p> <p>24 After that, as far as I can remember, I    25 think all of our contact had been over the phone.</p>	<p>1 having the CAS in front of me to look at, I'm not    2 entirely sure what you're asking.</p> <p>3 Q. Did you ever interact with Isaac Aguigui    4 at the scene of the crime?</p> <p>5 A. I think I did a couple of times. Because    6 we were holding that scene basically indefinitely.    7 And there were some personal effects that he needed    8 to get out of there. I remember at one time he    9 needed to get his dress uniform out for the memorial    10 service. So I believe that I was present one of    11 those times in order to escort him into the    12 residence and escort him back out and resecure it.</p> <p>13 Q. Was it standard practice to close off a    14 scene where there was a death investigation going    15 on?</p> <p>16 A. Yes.    17 (Exhibit 28 marked.)</p> <p>18 BY MR. BROOK:</p> <p>19 Q. I'm showing you what's been marked as    20 Exhibit 28. It's bearing Bates number JAHR0001475.    21 Do you recognize this document?</p> <p>22 A. I do.</p> <p>23 Q. What is it?</p> <p>24 A. This is a memorandum for Second Lieutenant    25 Andrea M. Ruth, Summary Court Martial Officer,</p>

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18 (Pages 66 to 69)

<p style="text-align: right;">66</p> <p>1 assigned by myself.</p> <p>2 Q. What was the purpose of this document?</p> <p>3 A. As I read this, this is the memorandum</p> <p>4 generated to inform necessary parties of scene</p> <p>5 control at that address, at the death scene.</p> <p>6 Q. Now, this is dated September 8th, 2011; is</p> <p>7 that right?</p> <p>8 A. That's the date, yes, sir.</p> <p>9 Q. So this is almost two months after the</p> <p>10 death occurred, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Now, why was the memo being generated at</p> <p>13 that date?</p> <p>14 A. I'm trying to remember this. I think this</p> <p>15 was because, a way this is -- I'm trying to piece</p> <p>16 together why the general -- I don't always have to</p> <p>17 generate or don't always have a requirement to</p> <p>18 generate a memorandum if we are keeping a scene.</p> <p>19 But if I remember right, there was still personal</p> <p>20 effects inside that house. And it is unusual for us</p> <p>21 to hold a -- have to hold a death scene for that</p> <p>22 long. But because of the fact that the cause of</p> <p>23 Sergeant Aguigui's death was still undetermined, I</p> <p>24 was not comfortable releasing anything. And so I --</p> <p>25 I want to say that this memo was generated to</p>	<p style="text-align: right;">68</p> <p>1 evidence deposit?</p> <p>2 A. So if an agent collects evidence, they</p> <p>3 have to -- that evidence has to be processed into</p> <p>4 the evidence room by the end of the next duty day.</p> <p>5 Q. And the lab results, does that include</p> <p>6 things like DNA test on potential suspects or what?</p> <p>7 A. That's one example. We are required to</p> <p>8 submit a lab request to wherever it's going to be</p> <p>9 tested at within five working days from when that</p> <p>10 determination is made, that the request needs -- or</p> <p>11 that the exam needs to be done.</p> <p>12 Q. And the next line it has the acronym RAF,</p> <p>13 is that Request for Assistance?</p> <p>14 A. Yes.</p> <p>15 Q. And being sent out to other CID officers;</p> <p>16 is that right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Is that term ever used to request</p> <p>19 assistance from non-CID agencies?</p> <p>20 A. It could be another military criminal --</p> <p>21 like NCIS or OSI, we may reach out to them to</p> <p>22 request for assistance if they are closer to where</p> <p>23 that activity is.</p> <p>24 Q. When it says meaningful inactivity, I</p> <p>25 guess that's investigative activity?</p>
<p style="text-align: right;">67</p> <p>1 basically explain to the Summary Court Martial</p> <p>2 Officer, look, kind of as a cover for them -- not a</p> <p>3 cover for them. A way to absolve the Summary Court</p> <p>4 Martial Office. Because they are the ones</p> <p>5 responsible for gathering up all the personal</p> <p>6 effects, getting them back to next of kin. Things</p> <p>7 like that too. So it's basically a way that she</p> <p>8 could say, Look, the CID agents will not release the</p> <p>9 scene, so I can't recover everything.</p> <p>10 MR. BROOK: Let's go off the record.</p> <p>11 (Off the record.)</p> <p>12 BY MR. BROOK:</p> <p>13 Q. I'd like you to look back at Exhibit 25,</p> <p>14 which should still be in front of you. Just, if you</p> <p>15 can explain to me, what the purpose of the lower</p> <p>16 right box investigative standard is.</p> <p>17 A. Okay. So the investigative standards box</p> <p>18 that's on this Investigative Plan, it's basically</p> <p>19 kind of a quick reference for the case agents to</p> <p>20 remind them of certain triggers. These are</p> <p>21 standards that are outlined in CID Regulations 195-1</p> <p>22 for timeliness of investigative activity. So it's</p> <p>23 kind of used as like a quick reference card for</p> <p>24 them.</p> <p>25 Q. Okay. And what does it mean when it says</p>	<p style="text-align: right;">69</p> <p>1 A. Yes, sir.</p> <p>2 Q. So ten duty days, does that mean ten duty</p> <p>3 days from the date of the offense, what does that</p> <p>4 mean?</p> <p>5 A. So what that means, the ten duty days,</p> <p>6 that we have a requirement to accomplish what's</p> <p>7 termed as meaningful investigative activity, at</p> <p>8 least once every ten duty days in every</p> <p>9 investigation. So that's the maximum amount of time</p> <p>10 that an agent can go without having done something</p> <p>11 what they term as meaningful. And I used air quotes</p> <p>12 there, but meaningful in that case. Sorry.</p> <p>13 Q. Great job with getting on the record as</p> <p>14 far as the air quotes.</p> <p>15 So meaningful, I think what you meant by</p> <p>16 that, correct me if I'm wrong, is it's subject to</p> <p>17 determination?</p> <p>18 A. Yes, sir.</p> <p>19 Q. But whether activity of any kind occurred</p> <p>20 or not, that's something that you could objectively</p> <p>21 say, right?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Now, is it possible that there's</p> <p>24 meaningful investigative activity that doesn't get</p> <p>25 recorded in the CAS?</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1       A. It's absolutely possible, yes, sir.</p> <p>2       Q. Where would it be recorded or memorialized</p> <p>3       if it was not on the CAS?</p> <p>4       A. If it was not on the CAS, it could be</p> <p>5       recorded within the Case Agent's notes or within the</p> <p>6       agent's investigative report, the AIR.</p> <p>7       Q. Now, if someone is supervising -- like the</p> <p>8       Team Chief told the Case Agent that I guess that</p> <p>9       there's a lack of information in the CAS for a given</p> <p>10      period of time and that needs to be corrected or</p> <p>11      explained, is that something that the Case Agent</p> <p>12      would then have to put into the CAS if there was</p> <p>13      meaningful activity in that period?</p> <p>14      A. Yes, sir. If a case agent failed to</p> <p>15      document something that they did within the CAS and</p> <p>16      a supervisor brought it to their attention, that</p> <p>17      agent would then need to go in, you know, either put</p> <p>18      the entry in or provide a delayed entry in in order</p> <p>19      to make sure that that information is captured.</p> <p>20      It's a quite common occurrence as agents are going</p> <p>21      out conducting investigative activity, sometimes</p> <p>22      they forget to document something that they did and</p> <p>23      they are reminded later, Hey, you did not document</p> <p>24      that. So it's not uncommon.</p> <p>25      Q. Is it possible within the ACI2 system two</p>	<p>1       not documented within five duty days, it has to go</p> <p>2       on as a delayed entry.</p> <p>3       So it was really office by office, case by</p> <p>4       case, supervisor by supervisor. Different people</p> <p>5       had different standards on what they wanted put in</p> <p>6       as a delayed entry versus what was put in as an</p> <p>7       actual time.</p> <p>8       Q. Did you set standards for the people</p> <p>9       working in your office?</p> <p>10      A. On delayed entries, I'm confident I did.</p> <p>11      But to be honest with you, I can't remember what</p> <p>12      standard we had set there. And usually the</p> <p>13      standards that would be set, it wouldn't be by what</p> <p>14      Wes Toole is comfortable with. I would try to</p> <p>15      generally get consensus from the Team Chiefs on what</p> <p>16      they felt reasonable and then we would come to an</p> <p>17      agreement, Yeah, I think that's reasonable to expect</p> <p>18      an agent to put it in then. But I can't remember</p> <p>19      what our office standard was at the time.</p> <p>20      Q. Was it common practice for the Case Agent</p> <p>21      or Team Chief to input investigative work that was</p> <p>22      being done by other people into the CAS?</p> <p>23      A. Sure. Yes, sir. Well, I should clarify</p> <p>24      that. By common I mean, it's not unusual or it's</p> <p>25      not unheard of it. It's more common to see that</p>
<p style="text-align: right;">71</p> <p>1       weeks after an event, say, to go back in and put</p> <p>2       something in with a date that is accurate in the</p> <p>3       system?</p> <p>4       A. It is possible, yes, sir.</p> <p>5       Q. And so when would an agent do what I just</p> <p>6       described in my last question versus labeling</p> <p>7       something a delayed entry?</p> <p>8       A. So at the time of this case when I was at</p> <p>9       Fort Stewart, there was no clear guidance on when</p> <p>10      you could -- how long you had before it had to</p> <p>11      become a delayed entry. Okay. So let's say, and</p> <p>12      I'm just using an example here, if it's all right.</p> <p>13      Q. Please.</p> <p>14      A. Let's say I interviewed you yesterday, but</p> <p>15      I was busy in five other cases, I did not have a</p> <p>16      chance to sit down and document it. If I document</p> <p>17      it today and go in there, it's okay for me to put --</p> <p>18      enter it on the date that it was actually done.</p> <p>19      Now, before at this time, whenever I was</p> <p>20      at Stewart, I think the term was a reasonable amount</p> <p>21      of time. That if the activity wasn't conducted in a</p> <p>22      reasonable amount of time, then the agent would make</p> <p>23      a delayed entry. Again, the term reasonable, same</p> <p>24      as meaningful, is a subjective standard. So since</p> <p>25      then CID has further clarified, I believe if it's</p>	<p>1       during the preliminary phase where I may have -- I'm</p> <p>2       just using an example again. I may have five agents</p> <p>3       out doing five different things and I'm assisting by</p> <p>4       kind of documenting. As they are coming and telling</p> <p>5       me things, Hey, you just keep going and I'll</p> <p>6       document in here. But you usually don't see it as</p> <p>7       much after the preliminary phase. It's not really</p> <p>8       common, but it's not unusual to see it, either.</p> <p>9       Q. Have you ever seen it where a Team Chief</p> <p>10      always inputs for investigative activity for someone</p> <p>11      who is investigating underneath them?</p> <p>12      A. I have seen that before. You will</p> <p>13      typically see that with someone who has some type of</p> <p>14      access issue with Alerts or -- I'm sorry, our new</p> <p>15      system is Alerts. The previous system then was</p> <p>16      ACI2. So if I had an agent who -- let's say a</p> <p>17      reserve agent, for example. Their ACS2 account may</p> <p>18      not be activated yet. You know, so they are more</p> <p>19      than capable of doing the investigative activity,</p> <p>20      but because it's taking time to get their account</p> <p>21      activated, the Team Chief will often put the</p> <p>22      information in for them. And we see that with Drug</p> <p>23      Suppression Teams also, where the guys are just</p> <p>24      waiting on their account to get activated but they</p> <p>25      are actively doing work.</p>

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20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 Q. Using the ACI2 system, is it correct that 2 each person had their own sort of dedicated log-in 3 to it?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. So you could not create an entry on the 6 CAS for someone else's name; is that right?</p> <p>7 <b>A. Again, I'm putting myself back at the time 8 of Fort Stewart, because it's a different system 9 now. At the time an agent could not -- and you 10 still can't, you can't log-in as someone else. But 11 I believe at the time in ACS-2 I could go in and 12 basically create activity for that person to where 13 I'm logging in, but I'm saying that this agent 14 conducted this activity. So if I remember correctly 15 when you look in the system, it would still show 16 that I entered it, but on behalf of someone else. I 17 hated that system.</b></p> <p>18 Q. When did the system change?</p> <p>19 <b>A. It changed over in April of 2015.</b></p> <p>20 Q. You said that you're still able to access 21 files that were created with that system, right?</p> <p>22 <b>A. Yes, sir.</b></p> <p>23 Q. And have those been moved over to the new 24 system?</p> <p>25 <b>A. Well, I mean, you can still retrieve</b></p>	<p style="text-align: right;">76</p> <p>1 BY MR. BROOK:</p> <p>2 Q. On page two.</p> <p>3 <b>A. I don't see anything on page two referring 4 to a name check on Isaac Aguigui.</b></p> <p>5 Q. Do you recall any reason why a name check 6 would not have been done on Isaac Aguigui?</p> <p>7 <b>A. I wasn't the one doing these checks or 8 doing this investigation on page one, so I don't 9 know why it would or would not have been done.</b></p> <p>10 Q. Do you know whether Agent Dale had a 11 previous relationship with Isaac Aguigui before this 12 investigation began?</p> <p>13 <b>A. Can you define what you mean by 14 relationship?</b></p> <p>15 Q. Did he have knowledge of him as a person?</p> <p>16 <b>A. I believe that he did, but I can't recall 17 exactly to what extent that was. I think he may 18 have been involved in a previous drug investigation, 19 but I could not tell you the details of it.</b></p> <p>20 Q. Do you recall that there was a 21 confidential informant that was involved in this 22 case?</p> <p>23 <b>A. I'm looking on page one right now, and I 24 see as the first CAS entry basis for investigation, 25 that a CID source is registered. So based on</b></p>
<p style="text-align: right;">75</p> <p>1 anything that was put in under that system or the 2 one -- the Legacy system before that. You can still 3 retrieve it because it's all within the same 4 repository, but it's just -- there's a different 5 interface. Yeah, a different interface.</p> <p>6 Q. For example, when you were pulling up the 7 CAS for the Deidre Aguigui investigation, you used 8 the new system to do that?</p> <p>9 <b>A. Yes, sir.</b></p> <p>10 Q. I'm going to hand you what's been 11 previously marked as Exhibit 11. In previous 12 depositions it's been established that this is the 13 CAS or sometimes referred to as AAS for the 14 conspiracy to commit murder investigation. Does 15 that look correct to you?</p> <p>16 <b>A. Yes, sir, it looks correct.</b></p> <p>17 Q. I'd like you to turn to the second page. 18 This reflects that there were name checks done by 19 Agent Dale for Nicholas Arranyos and Steven Lloyd, 20 correct?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. It does not reflect a name check being 23 done for Isaac Aguigui?</p> <p>24 MS. JOHNSTON: On page two?</p> <p>25</p>	<p style="text-align: right;">77</p> <p>1 reading that, I would say, yes, there was some type 2 of source involvement in this case.</p> <p>3 Q. Do you have any recollection of that as we 4 sit here today?</p> <p>5 <b>A. Yes, sir.</b></p> <p>6 Q. Okay. Do you recall what the CID source's 7 relationship was with Isaac Aguigui?</p> <p>8 <b>A. I don't recall.</b></p> <p>9 Q. Do you recall that the CID source, though, 10 was connected with Isaac Aguigui and not with the 11 other individuals that were being investigated?</p> <p>12 <b>A. I don't recall what the source's 13 connection was with any of these subjects of this 14 case.</b></p> <p>15 Q. Do you recall whether at some point you or 16 others in your office developed concerns about the 17 reliability of the CID resource?</p> <p>18 <b>A. Without the benefit of having reviewed the 19 case, I don't recall having any concerns as I sit 20 here today. But --</b></p> <p>21 Q. I'd like to direct your attention to page 22 three. This is the SAC review, right?</p> <p>23 <b>A. Yes, sir.</b></p> <p>24 Q. Was it common for you to conduct a SAC 25 review the day after an investigation begins?</p>

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21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1       A. On -- again, depending on the type of  2 investigation, the type of offense that's under  3 investigation, I'll typically put a review in before  4 an initial report is sent out.  5       Q. Now in an initial report, who was that  6 sent to?  7       A. So as discussed earlier, the initial  8 report or any CID reports, it's all going to be  9 dependent upon the nature of the offense being  10 investigated. The subject or suspects that are  11 under investigation. It may also depend on  12 whether -- whether there's any type of undercover  13 activity or if we are concerned about the compromise  14 of information. If that's the case, it would not be  15 uncommon to have a report restricted to CID only.  16 You know, and I'll give you an example.  17       If a soldier is under investigation but  18 does not know that CID is investigating them yet,  19 we'll often restrict that report to CID only. Just  20 so that someone else who is another authorized  21 recipient doesn't inadvertently make them aware of  22 it. But then we'll unrestrict it once the person  23 knows they are under investigation. So that's why I  24 say, it's really a situation dependent.  25       Q. The line entry above SAC review, is</p>	<p>1 to the CIC?  2       A. So the way that this reads, was that it  3 went right back to Agent Dale. It doesn't look like  4 I documented that it was going over to the CIC. And  5 I'm trying to see -- yeah. So more than likely what  6 happened, and this is not unusual or uncommon,  7 either typically you would want the CIC to be able  8 to review the investigation right after the initial  9 report is. That's typically how we try to make the  10 case flow through the office. Again, because every  11 case is different, every case is unique, what will  12 often occur. If I don't want that case to go over  13 to the CIC review yet, meaning that it's more time  14 away and out of the agent's hand, I will often get  15 it directly back to the agent so they continue  16 working that investigation and work the CIC review  17 in during the life of the case.  18       Q. Are CIC reviews required under CID?  19       A. Yes, sir.  20       Q. How soon after a case begins is there a  21 CIC review required?  22       A. The regulatory requirement for CIC reviews  23 is that at a minimum they will be conducted upon  24 initiation and then upon completion. And then it's  25 suggested it should occur during the life of the</p>
<p style="text-align: right;">79</p> <p>1 that -- it says send investigative report for  2 approval. Is that referring to the initial report  3 you just mentioned?  4       A. Yes, sir. That's an automated message.  5 That's not something that I manually entered in.  6 Once I hit send on that report, it creates a CAS  7 entry for me basically saying that that report was  8 sent. And then it looks like I put in my review  9 immediately thereafter or documented my review  10 immediately thereafter.  11       Q. And up above the send investigative report  12 for approval, there's an entry referring to how  13 Andrew Dale drafted the initial report; is that  14 right?  15       A. Yes, sir.  16       Q. The last part of that says, file to SAC,  17 then CIC for review?  18       A. That's right.  19       Q. That's why you have SAC review here?  20       A. Yes, sir.  21       Q. At end of your review on page four, it  22 says that you sent it. It says, to SA Dale for  23 continuation?  24       A. Yes, sir.  25       Q. Does that mean that you did not send it on</p>	<p>1 investigation, as well.  2       Q. Okay. So if a CIC review does not occur  3 say within the first month of an investigation, is  4 that something that is in violation of that  5 regulation?  6       A. Well, as I said earlier, it says that it  7 should be reviewed upon the initiation and prior to  8 completion. But then there's also everything is  9 case dependent. If there's a reason, i.e., whether  10 the CIC is out of the office, whether or not she or  11 he is burdened with additional duties. You know,  12 there's a number of reasons that would influence  13 that. So while it is a requirement, there is always  14 exceptions to those requirements. And if operations  15 necessitate that that CIC review not be done within  16 the first few days or first month or so, then it's  17 not the ideal, but it's not prohibited, either.  18       Q. Let me ask you to go back briefly to  19 Exhibit 25. It's the Investigative Plan.  20       A. Yes, sir.  21       Q. What does it mean at the bottom right of  22 that box we were looking at where it says, action  23 taken, 30 calendar days?  24       A. Okay. So what that means is this is  25 really for dispatch of DA Form 4833. I mentioned</p>

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22 (Pages 82 to 85)

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1 that earlier. That's the Commander's report of  
 2 disciplinary action taken. So once we close an  
 3 investigation and that 4833 is sent to a Commander,  
 4 we have 30 days to get a response back. If we don't  
 5 receive that 4833 back within 30 days, then we have  
 6 to issue second notice or reminder. Again, it's  
 7 another card, kind of a trigger to assist the IST,  
 8 Hey, I have 30 days to get this 4833 back.

9 Q. And how about the line above that, unknown  
 10 subject, finals?

11 A. So at the time of the investigation the  
 12 regulation required that final reports – if you had  
 13 a subject in a case where it was an unknown or if  
 14 you had a case where there was an unknown subject,  
 15 once the determination was made that the case was  
 16 going to be closed, the agent had 30 days to get all  
 17 the final report built and all the exhibits together  
 18 for dispatch and final report to be sent 30 days  
 19 from the day the SAC said close it.

20 Q. And what about unfounded finals?

21 A. The same thing, sir. So if – so if an  
 22 agent is conducting an investigation, they establish  
 23 or they determine that the offense did not occur,  
 24 then from the date that determination is made  
 25 usually in conjunction with an SJA opine or

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1 Q. But not necessarily 24 hours after the  
 2 crime occurred?

3 A. Yes, sir, that's correct.

4 Q. And so for that, in that RFA follow up, it  
 5 says 15 duty days, that means 15 duty days after  
 6 sending the RFA?

7 A. Yes, sir.

8 Q. I'd like to now go back -- sorry to jump  
 9 around -- to page three of Exhibit 11, your SAC  
 10 review. It says that you believe there's credible  
 11 information to believe Boyd committed the offense of  
 12 communicating a threat and solicitation to commit  
 13 murder. So is it correct that you titled him for  
 14 the offense at that point?

15 A. Without having the benefit of looking at  
 16 the report that was dispatched on 18 May, usually --  
 17 I'm reading here that I'm concurring there's  
 18 credible information. So typically that would be a  
 19 trigger for titling somebody.

20 Q. If you wanted to get onto your computer  
 21 system and pull up that report that you sent, would  
 22 you be able to do that?

23 A. Yes, sir.

24 Q. Those are things that are accessible to  
 25 you?

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1 concurrent, they have 15 days from the time that the  
 2 supervisor says close it to get the final report  
 3 dispatched. Again, that was the standard – let me  
 4 rephrase that, sir. That's what's depicted on the  
 5 investigative standards here, but I don't know if  
 6 this Investigative Plan that the agent was using  
 7 was – if that was a current timeliness standard or  
 8 not. It's since changed, that's why I say to where  
 9 every case is 30 days from the time they are told to  
 10 close it. But that's what that meant. I can't say  
 11 that that's what the standard was at the time this  
 12 IP was generated.

13 Q. So that I'm sure I understand it. With  
 14 all these time frames, this is from the time when  
 15 it's determined that one of these things should be  
 16 happening: is that correct?

17 A. From the time that a supervisor makes the  
 18 determination that one of these things is going to  
 19 happen, yes, sir.

20 Q. So, for example, victim's interview, that  
 21 would be 24 hours after a victim is identified?

22 A. Yes, sir.

23 Q. And eyewitnesses interviewed, 24 hours  
 24 after being identified?

25 A. Yes.

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1 A. Yes, sir.

2 Q. Can you pull that up on your phone right  
 3 now?

4 A. No, sir.

5 Q. Going down to -- there's a set of numbers  
 6 after the first paragraph. Is that basically your  
 7 contribution to the Investigative Plan for this case  
 8 or how would characterize what you're doing there?

9 A. What I characterize here, this is part of  
 10 my review. Generally what I'll do in any type of  
 11 review or in most reviews, I'll put in a narrative  
 12 kind of explaining justification for a certain  
 13 decision. Explaining my decision making process on  
 14 certain things. And whenever I start doing the  
 15 numbered items, it's usually things to draw the  
 16 agent's attention to. Pointing out issues or  
 17 concerns or providing feedback on things. It's part  
 18 of the overall review. Things that I want them to  
 19 specifically look at and then address line by line.  
 20 Either respond to them or do it.

21 Q. Like action items?

22 A. Some things are actionable. It may be --  
 23 for their attention, for their situation. Something  
 24 I just want them to acknowledge.

25 Q. And just, again, to make sure I understand

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23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 it right. The Investigative Plan doesn't have 2 anything on it other than a list of leads for the 3 investigator to follow or is there something else 4 that goes into the Investigative Plan?</p> <p>5 <b>A. Are we talking about this Investigative 6 Plan?</b></p> <p>7 Q. The Investigative Plan in general, as a 8 concept.</p> <p>9 <b>A. Well, like I said, the Investigative Plan 10 is a living, breathing document. So I'll give you 11 an example. Two years ago -- because there's not a 12 standard Investigative Plan in CID, there's guidance 13 in terms of what is bare minimal required on an IP. 14 But I revised the IP that I use in my offices so 15 that it has prioritization, it has suspensions. 16 Although the intent of the Investigative Plan is to 17 identify investigative activity to be conducted, 18 it's also used for a number of things. It's used 19 for tracking, like this one here. It has the 20 investigative standard. It's used to kind of help 21 the case moving forward as a quick reference for the 22 Case Agent so that they don't have to go through 23 every time they pick up the case to do something 24 they have to read through 20 pages of what happened 25 since the last review. A quick reference for them.</b></p>	<p style="text-align: right;">88</p> <p>1 and the community around Fort Stewart at the time, 2 Hinesville, there were some gangs and there were 3 some type of violent crimes being created in the 4 drug arena around that time. I just want to make 5 sure anytime we are talking about guns and drugs, I 6 wanted everything tight. So that everybody is safe. 7 <b>That includes suspects, sources and investigators.</b></p> <p>8 Q. And what does -- the next line refers to a 9 TLE request. What is that?</p> <p>10 <b>A. TLE is referred to or it's an acronym used 11 for Technical Listening Equipment. So think in 12 terms of like a body wire.</b></p> <p>13 Q. Do you recall who you were planning on 14 wearing a wire in this case?</p> <p>15 <b>A. I don't recall who the request was 16 going -- who the target of that request was going to 17 be, but I wanted them to start drafting it up. 18 Because there's an approval process it has to go 19 through for Army CID. We have to -- any TLE request 20 has to be submitted through our battalion to our 21 group, ultimately to the Army General Council for 22 approval. So that can often be a lengthy process. 23 I wanted him to start leaning forward, thinking 24 about that, again going back to the safety.</b></p> <p>25 Q. Is that the same thing as memo five?</p>
<p style="text-align: right;">87</p> <p>1 Q. What is an OP plan?</p> <p>2 <b>A. So an OP plan is shortened version of 3 what's called an Operations Plan. So if an agent or 4 a team is conducting a surveillance operation or if 5 they are going to conduct a controlled purchase or 6 conduct a raid somewhere, they will put together an 7 OP plan. This was adopted -- several law 8 enforcement agencies use Operation Plans. Ours 9 follows along that model that's also adopted for 10 military operations. Any time we conduct a military 11 -- or an operation in the military, there's a five 12 paragraph OP order. We don't keep to the same 13 standards as a military OP order, but that's the 14 purpose of it.</b></p> <p>15 Q. And the next line after you mentioned OP 16 plan, you said, risk assessment will be of the 17 utmost importance on this, exclamation mark. We 18 will, will in all caps, cover all of our bases and 19 discuss every contingency and develop measures to 20 mitigate each?</p> <p>21 <b>A. Sure.</b></p> <p>22 Q. What were you concerned about?</p> <p>23 <b>A. Guns and drugs. That's what I was 24 concerned about. You know, we are talking about 25 some off-post civilian targets, also. Fort Stewart</b></p>	<p style="text-align: right;">89</p> <p>1 <b>A. No. That's a blast from the past. Memo 2 five used to be required for conducting off-post 3 operations on a civilian target, if I remember 4 correctly. They are different. You would usually 5 see both of them being submitted at the same time, 6 you know, because if I'm doing an off-post operation 7 on a civilian target and I want to aware TLE, we 8 would send both of them up together.</b></p> <p>9 Q. Turning to page four, item number six. 10 You said that anything that we do off-post will go 11 through MACE, M-A-C-E, first?</p> <p>12 <b>A. Yes, sir.</b></p> <p>13 Q. Why did you say that?</p> <p>14 <b>A. So anytime we are conducting law 15 enforcement operations off the installation, we have 16 responsibility to coordinate with local law 17 enforcement just so that they know we are out there. 18 MACE was the counter narcotics task force that was 19 operating in that area. We had a partnership with 20 them. We did several joint operations.</b></p> <p>21 <b>So going back to what I said earlier, guns 22 and drugs. We want to make sure they are aware of 23 anything we are doing out there so that they can 24 either assist or respond as needed. But also to 25 de-conflict information. You typically wouldn't</b></p>

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24 (Pages 90 to 93)

<p style="text-align: right;">90</p> <p>1    want to start targeting a civilian and doing    2    something directed towards them if another agency is    3    also targeting them. Now you're stepping all over    4    each other. That's why I want to make sure,    5    de-conflict this with them and let them know.</p> <p>6    Q. Did you interact personally with MACE in    7    your time at Fort Stewart?</p> <p>8    A. I think maybe just in passing or over    9    emails. I never really did any joint operations    10   with them. But Agent Dale, as our Drug Team Chief,    11   he was our the primary conduit with MACE.</p> <p>12   Q. Were there ever occasions with CID when    13   you were in command at Fort Stewart, took a case    14   that it was investigating and gave it to MACE in    15   order for them to complete the investigation and    16   decision whether to prosecute anyone?</p> <p>17   A. I don't remember anything like that. But    18   that's not to say that it did not occur, nor would    19   it be unusual. I mean, if during the course of an    20   investigation we identify subject suspects that have    21   military affiliation, then we would share that    22   information with MACE, pass it off to them, because    23   we lack jurisdiction to pursue civilians where there    24   isn't an Army nexus. If it was just strictly all    25   civilian, we would hand it off to them.</p>	<p>1    prepare a status report adding Aguigui as a subject    2    and listing the offense of conspiracy.    3    Does that mean you told him to title    4    Aguigui for conspiracy?</p> <p>5    A. Yes, sir, that's the way it reads.</p> <p>6    Q. Do you know whether or not that was    7    followed through on?</p> <p>8    A. Without the benefit of seeing the status    9    report that followed that, I don't know.</p> <p>10   Q. If there was such a status report, would    11   that have been something that went through your    12   hands before it got distributed anywhere?</p> <p>13   A. It depends. I mean, Team Chiefs they have    14   the same ability to dispatch status reports. So    15   depending on what was going on at the office at the    16   time, I might have just said, Hey, let me take a    17   look at the stat or have Agent Greene take a look at    18   the stat. You punch it out or, Hey, have Agent    19   Greene punch the status report out. So it may or    20   may not have come through my hands, I don't    21   remember.</p> <p>22   Q. Because it's an automated process, as you    23   mentioned earlier, is there any way that a status    24   report would have been sent without it showing up in    25   CAS?</p>
<p style="text-align: right;">91</p> <p>1    Q. What if a soldier was implicated in    2    criminal activity that targeted civilians off base,    3    is that something that CID ever referred out?</p> <p>4    A. I don't know if we ever did or not. Are    5    you asking if that's something that we did or for a    6    specific example or if it's something that we could    7    do?</p> <p>8    Q. It's something you could do?</p> <p>9    A. Right.</p> <p>10   Q. But in your experience, it's not something    11   CID did, correct?</p> <p>12   A. Not during my time there. I can't    13   remember whether we did or didn't. Because, like I    14   said, I didn't really have a whole lot of daily    15   interaction into the drug operations. I would    16   oversee any of their operations, I would review    17   them. But the day-to-day cases, I don't know if we    18   referred any soldiers to MACE or not.</p> <p>19   Q. I'd like you to move ahead to page ten of    20   Exhibit 11 in front of you. At the bottom of this    21   page is an entry on behalf or by Andrew Dale. And    22   it refers to advice that SA Toole gave to him on May    23   21st, 2011.</p> <p>24   A. Yes sir.</p> <p>25   Q. It says, SA Toole advised SA Dale to</p>	<p>1    A. I don't know if it would or not. I would    2    think that the CAS would show a status report was    3    sent.</p> <p>4    Q. We earlier talked about the OP plan. Is    5    that something that was typically kept in the case    6    file?</p> <p>7    A. Yes, sir.</p> <p>8    Q. So on the next page, page 11, it's SAC    9    review by you, if I'm understanding it correctly.    10   Item number two it says, that you -- I see the CRM    11   and the risk assessment but not the OP plan that we    12   discussed and approved. Was that something that was    13   unusual?</p> <p>14   A. I would typically want to see the OP plan    15   within the file whenever I'm reviewing it. But it's    16   quite possible also that the OP plan could have been    17   kept on the shared drive and they just hadn't    18   printed it out and included it in the file. An OP    19   plan, similar to an IP, it's kind of a living,    20   breathing thing. As information changes or    21   situations dictate, that Operation Plan will have to    22   be revised, tweaked. So it may have been it just    23   wasn't printed out.</p> <p>24   Q. When you performed this SAC review, who    25   was supposed to respond or acknowledge the numbered</p>

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25 (Pages 94 to 97)

<p style="text-align: center;">94</p> <p>1 items that you listed here?</p> <p>2 <b>A. Usually the agent to whom the case is</b>  <b>returned or whoever the primary Case Agent was.</b></p> <p>3 Q. So since this was a case that was being  done through the Drug Supression Team, would that  have been the same person as the Team Chief?</p> <p>4 <b>A. It would all depend. If Agent Dale</b>  <b>decided he wanted to respond to my review and then</b>  <b>give it back to his investigator, he could certainly</b>  <b>do that. Or depending on the investigator and his</b>  <b>level of comfort with the investigator, he would</b>  <b>have him respond directly back to the SAC review.</b></p> <p>5 Q. Putting aside who actually makes the  response, who is responsible for making sure that  someone responds?</p> <p>6 <b>A. Who is responsible? I am.</b></p> <p>7 Q. So in this instance, and you can correct  me if I'm wrong, you can flip through the next few  pages, I don't see a response within the next couple  of weeks it seems, at least afterwards. Is that  commonplace for people to not respond to these  things at all during your time at Fort Stewart?</p> <p>8 <b>A. So common. No, sir, not common. Is it</b>  <b>unusual? It's not unusual, either. Because, you</b>  <b>know, agents, investigators, what they will often do</b></p>	<p style="text-align: center;">96</p> <p>1 Q. And then the 11th of July?</p> <p>2 <b>A. Yes, sir.</b></p> <p>3 Q. Okay. And did you consider that a timely  response?</p> <p>4 <b>A. You know, I wouldn't consider it a timely</b>  <b>entry into a CAS, but that doesn't always mean that</b>  <b>the agent didn't receive and respond to -- or action</b>  <b>the guidance that was given so there was -- I'll</b>  <b>acknowledge that there was almost a month before any</b>  <b>response was documented in the CAS, but I cannot</b>  <b>look at that and immediately infer that that means</b>  <b>they did not action something.</b></p> <p>5 Q. Jump around a little bit here. So I  apologize for that in an advance. Please go to the  next page that you were just looking at, page 26.  And that's Team Chief review by Agent Dale?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. That first line there it says, This ROI is  outside the ten day investigative activity window.  Is that referring to the same thing that  you mentioned earlier about meaningful investigative  activity being required to be done every ten duty  days?</p> <p>8 <b>A. That's the way it looks, yes, sir.</b></p> <p>9 Q. And he said, This is unacceptable. Why is</p>
<p style="text-align: center;">95</p> <p>1 is get that case back, see what guidance was given  2 and then start actioning on that. But then fail to  3 go in and document it. Or document it accordingly  4 within CAS. So it's something that's not preferred.  5 We like to see an immediate response or close to an  6 immediate response in a reasonable -- air quotes  7 again -- reasonable amount of time. But sometimes  8 people become overwhelmed with circumstances and  9 aren't able immediately put that in. It's not the  10 preferred method but, unfortunately, it happens.  11 But I see that there was a response provided.</p> <p>12 Q. When was that?</p> <p>13 <b>A. I'm sorry, I thought there was a response</b>  <b>provided. Response to SAC review. 11 July.</b></p> <p>14 Q. Okay.</p> <p>15 <b>A. But it looks like it was in response to</b>  <b>the 17 June review that I did.</b></p> <p>16 Q. So there were a few SAC reviews before  17 there was any response in here, correct?</p> <p>18 <b>A. There was one SAC review in between the</b>  <b>first one and his response.</b></p> <p>19 Q. Okay. And so the one that -- the last one  20 before the response was on the 17th of June; is that  21 right?</p> <p>22 <b>A. Yes, sir, that's what it looks like.</b></p>	<p style="text-align: center;">97</p> <p>1 it unacceptable to have it be outside of ten duty  2 days?</p> <p>3 <b>A. So the CID Regulation 195-1 has an</b>  4 <b>appendix that discusses what we commonly refer to as</b>  5 <b>the three Ts. Timeliness of investigative activity.</b>  6 <b>Thoroughness of investigative activity. And timely</b>  7 <b>reporting.</b></p> <p>8 Within timeliness of investigative  9 activity one of the guidelines that's given is that  10 a case should have meaningful investigative activity  11 once every ten working days. And these guidelines  12 were provided kind of as a way to say, hey, when all  13 else fails, if you can get meaningful investigative  14 activity into your case once every ten days, it will  15 keep the case moving forward. So that's a standard  16 that we have come to be held accountable to. It  17 doesn't -- but there's also what's called a  18 reasonable application standard within the  19 regulation. Understanding that sometimes there are  20 things that are going on within an office, within a  21 certain team between agents. Going TDY or on  22 temporary duty, leaves, passes, prioritization of  23 cases shifting or cases are simply not going to have  24 activity in them once every ten days.</p> <p>25 I see on the review Agent Dale saying that</p>

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<p style="text-align: right;">98</p> <p>1 it's unacceptable, it's certainly not in keeping    2 with the standard what the regulation says, but it    3 happens.</p> <p>4 Q. Right. Now in this instance, he said it    5 was unacceptable. And Agent Dale said further, You    6 will ensure this case file has no further    7 investigative time gaps.</p> <p>8 Is it correct to say in that instance    9 whoever is responding to it, should be doing    10 something within every ten days?</p> <p>11 A. Agent Dale was the Team Chief and he's    12 directing somebody to make sure there's no further    13 gaps. So it would be reasonable that person would    14 want to comply with that.</p> <p>15 Q. At the end of that entry by Agent Dale, it    16 says file to Investigator Atkins. Does that mean    17 you in the first part of that entry is referring to    18 Investigator Atkins or could it be referring to    19 someone else?</p> <p>20 A. So the next entry after says, Follow    21 Investigator Atkins, is an AAS entry from me. All    22 non-SSIs will be held in abeyance. So this was an    23 entry that I placed into every LER within the    24 office. Basically when we have significant type of    25 cases that occur, I'll often place cases in</p>	<p>1 start out with one agent or investigator, it may be    2 transferred to another because of leaves, schools,    3 those other considerations, caseload, etcetera.</p> <p>4 Q. Do you recall whether Investigator Spencer    5 left the Fort Stewart CID office at some point while    6 you were there?</p> <p>7 A. He did, yes, sir. I remember he left. I    8 am trying to remember if he PCS, permanent change of    9 station, or ended his active duty service. I can't    10 remember. I think it was one of those two.</p> <p>11 Q. Do you know whether that had any    12 relationship to some of the delays that may have    13 occurred in this case that we are looking at here?</p> <p>14 A. So with Investigator Spencer being the    15 drug team NCOC, non-commission officer in charge,    16 basically he was the right hand to Agent Dale, he    17 was his Team Chief. Not his Team Chief, but they    18 were kind of a team. So anytime that a Team Chief    19 loses their next senior person who they lean on to    20 help with reviews, operations, it always affects    21 operations. I'm going through it right now.</p> <p>22 MR. BROOK: Off the record for a second.    23 (Lunch recess taken.)</p> <p>24 BY MR. BROOK:    25 Q. Agent Toole, I'd like to direct your</p>
<p style="text-align: right;">99</p> <p>1 abeyance. Hey, this is an all hands on deck,    2 everybody is helping out. Allows them -- so they    3 don't get gigged, if you will, for not having    4 activity in the case every ten days. I did not    5 actually receive the file back when that entry was    6 made. I went in and put entries into the ACS2 in    7 every case.</p> <p>8 Q. I guess my question is, I'm trying to    9 understand if it says at the end of the previous    10 entry, file to Investigator Atkins, that means that    11 Investigator Atkins was the one who was supposed to    12 respond to the Team Chief review?</p> <p>13 A. It means the physical file went back to    14 Investigator Atkins. I don't know who Mr. Dale    15 wanted to respond to his review. But I read here    16 he's returning the file back to Investigator Atkins.</p> <p>17 Q. So it could have been someone else?</p> <p>18 A. It could have.</p> <p>19 Q. Is it typically the Case Agent if there is    20 one specified who responds to a Team Chief review?</p> <p>21 A. Typically, yes, sir.</p> <p>22 Q. Are records kept of who is the Case Agent    23 on a given case?</p> <p>24 A. The CAS is usually the best record on who    25 the case is assigned to. Even though the case may</p>	<p>101</p> <p>1 attention back to Exhibit 13 that we were looking    2 at -- I'm sorry, 11. Page 12. It's the second part    3 of -- it's the second part of the June 1st, 2011 SAC    4 review that you conducted.</p> <p>5 A. Okay.</p> <p>6 Q. The very last paragraph there, you said    7 that you were going to dispatch the status report to    8 add Aguigui as a subject and to add the offense of    9 conspiracy. And we talked about before that refers    10 to titling him for the event, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And then adds, Aguigui made admissions to    13 smoking Spice, however I'm not inclined to title him    14 for this offense as I believe it was previously    15 investigated in a separate ROI by this office. Make    16 sure we document that case number for future    17 reference.</p> <p>18 A. Uh-huh.</p> <p>19 Q. Do you remember making that statement?</p> <p>20 A. I don't remember making that statement,    21 but I'm reading this, and that sounds like something    22 I would say.</p> <p>23 Q. Okay. To whom were you making this    24 statement, Make sure we document that case number?</p> <p>25 A. To the drug team. To the team that this</p>

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27 (Pages 102 to 105)

<p style="text-align: center;">102</p> <p>1       <b>is going back to.</b></p> <p>2       Q. Now, were you ever given any information</p> <p>3       about whether there was, in fact, such a previous</p> <p>4       ROI for Aguigui smoking Spice?</p> <p>5       <b>A. I would have to assume there was. If</b></p> <p>6       <b>I'm – because I would not have inherently known</b></p> <p>7       <b>that, not having day-to – familiarity with the drug</b></p> <p>8       <b>cases or the drug – simple possession or use cases.</b></p> <p>9       <b>So I would have had to known that in order to make</b></p> <p>10       <b>that statement that he made admissions to Spice.</b></p> <p>11       <b>But I understand this was already investigated in</b></p> <p>12       <b>another case, so we are not going to title him for</b></p> <p>13       <b>that in this case because it's already been</b></p> <p>14       <b>investigated.</b></p> <p>15       Q. Did anyone tell you that there wasn't a</p> <p>16       prior case?</p> <p>17       MS. JOHNSTON: That there was not a prior</p> <p>18       case?</p> <p>19       BY MR. BROOK:</p> <p>20       Q. Right. Did anyone ever say something like</p> <p>21       that to you?</p> <p>22       <b>A. Not that I remember, no.</b></p> <p>23       Q. If there was a prior case, or ROI, it</p> <p>24       would have a case number on it, right?</p> <p>25       <b>A. Yes, that would be reasonable.</b></p>	<p style="text-align: center;">104</p> <p>1       <b>A. I have no idea.</b></p> <p>2       Q. Can you think of any circumstances in</p> <p>3       which someone who is responding to this SAC review</p> <p>4       could have just found out that there was no separate</p> <p>5       ROI and kept that to themselves and that action</p> <p>6       being proper?</p> <p>7       <b>A. And that action being proper? I can't</b></p> <p>8       <b>think of any scenario to where if someone saw this,</b></p> <p>9       <b>this review, and knew that there was not an ROI and</b></p> <p>10       <b>then ensuring that there was one, I can't -- I can't</b></p> <p>11       <b>think of a scenario where that would be appropriate.</b></p> <p>12       Q. Am I correct that in that scenario, if it</p> <p>13       happened, without at least an ROI or anything like</p> <p>14       that, the fact that Aguigui made admissions to</p> <p>15       smoking Spice would not reach the chain of command?</p> <p>16       MS. JOHNSTON: Objection as to form. If</p> <p>17       you can understand, you can answer.</p> <p>18       <b>A. Can you restate it?</b></p> <p>19       Q. Sure. In the scenario that I just</p> <p>20       described, which I can repeat if you want me to --</p> <p>21       <b>A. That's fine.</b></p> <p>22       Q. If that occurred, then how would the chain</p> <p>23       of command learn about the fact that Aguigui made</p> <p>24       admissions to smoking Spice?</p> <p>25       <b>A. It would either be provided with a copy of</b></p>
<p style="text-align: center;">103</p> <p>1       Q. Can you think of any reason why, if there</p> <p>2       was a separate ROI that was previously investigated,</p> <p>3       there would be no case number associated with it?</p> <p>4       <b>A. If there was a case that was done on a --</b></p> <p>5       <b>by our office, it would either be assigned what we</b></p> <p>6       <b>call a target analysis file or an ROI number, but</b></p> <p>7       <b>there would be some type of case number associated</b></p> <p>8       <b>with that documenting that activity.</b></p> <p>9       Q. Based on your instruction here, if the</p> <p>10       drug team determined that there was no such case</p> <p>11       number, is that something that they had to make note</p> <p>12       of?</p> <p>13       <b>A. If there was no such case number, then it</b></p> <p>14       <b>would either be documented within this -- within</b></p> <p>15       <b>this case or a separate number would be generated as</b></p> <p>16       <b>a result. So just a scenario -- trying to play out</b></p> <p>17       <b>the scenario that, okay, if I said, Hey, he was</b></p> <p>18       <b>already investigated for Spice before, if they came</b></p> <p>19       <b>back to me and said, No, Chief, actually we don't</b></p> <p>20       <b>have another ROI on that. I would say, Okay,</b></p> <p>21       <b>generate another case number, because it's separate</b></p> <p>22       <b>from this or we would just include it in this and</b></p> <p>23       <b>have multiple offenses.</b></p> <p>24       Q. As you sit here today, do you know whether</p> <p>25       there was a separate ROI?</p>	<p style="text-align: center;">105</p> <p>1       <b>a report or they would be briefed in person by the</b></p> <p>2       <b>agent or investigator that their soldier made</b></p> <p>3       <b>admissions to smoking Spice.</b></p> <p>4       Q. When you were the SAC at Fort Stewart, did</p> <p>5       you believe that it was important that if Aguigui --</p> <p>6       that because Aguigui made admissions to smoking</p> <p>7       Spice that there be some sort of report on that made</p> <p>8       to his chain of command?</p> <p>9       <b>A. I felt that -- it's not necessarily I felt</b></p> <p>10       <b>important that it be reported to as chain of</b></p> <p>11       <b>command, because everything that we do a report of</b></p> <p>12       <b>investigation on is reported to the chain of</b></p> <p>13       <b>command. It's almost like an automatic trigger.</b></p> <p>14       <b>That's why I put on there, I felt it was important</b></p> <p>15       <b>we document the fact that he had been previously</b></p> <p>16       <b>investigated for that offense.</b></p> <p>17       Q. His offense of smoking Spice, something</p> <p>18       that was of concern generally at Fort Stewart when</p> <p>19       you were there?</p> <p>20       <b>A. Yes, it was.</b></p> <p>21       Q. Why is that?</p> <p>22       <b>A. Because Spice was a new substance. We</b></p> <p>23       <b>were seeing quite a surge of Spice activity and,</b></p> <p>24       <b>obviously, health concerns with soldiers that, you</b></p> <p>25       <b>know, have smoked Spice and the impact that could</b></p>

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<p style="text-align: center;">106</p> <p>1 have. So we were having a hard push on trying to 2 shut down the supply of Spice off post, and helping 3 identify soldiers that were using it for risk 4 reduction.</p> <p>5 Q. At the time that you made this SAC entry 6 on June 1st, 2011, did you have any knowledge of 7 Private Aguigui's security clearance?</p> <p>8 A. No.</p> <p>9 Q. Is that something that would be relevant 10 in determining whether it was important to do an ROI 11 on a soldier admitting to smoking Spice?</p> <p>12 A. No.</p> <p>13 Q. Are you aware of any regulations that 14 prohibit people with top security clearance from 15 using any kind of drugs?</p> <p>16 A. I'm aware in order to retain a clearance 17 you have to keep a clean criminal history, which you 18 know, is something that's checked during periodic 19 reviews, but -- I'm sorry, I'm really not -- I'm 20 really not tracking with -- if you're looking for a 21 regulation that has to do with top secret clearances 22 and criminal --</p> <p>23 Q. Would it surprise you that after you made 24 this notation in this report if Isaac Aguigui 25 obtained a top security clearance for a</p>	<p>1 A. Uh-huh.</p> <p>2 Q. Is that a yes?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And do you recall, if you would, please, 5 take a look at the first few sentences in this 6 Andrew Dale, June 16th at 16:00 hours review. In 7 particular it says, From review of the statements it 8 almost seems as if Aguigui is the main conspirator 9 behind the conspiracy to commit murder. Lloyd still 10 seems to be the main drug pusher, but has denied all 11 involvement.</p> <p>12 Do you remember this involvement in the 13 case?</p> <p>14 A. Somewhat, yes, sir. I remember Dale 15 coming to me with concern that, hey, it looks like 16 Aguigui was trying to underplay his level of 17 involvement in the conspiracy. Yeah, I do remember 18 that, yes, sir.</p> <p>19 Q. Did that change your opinion of Aguigui 20 and how cooperative he was being?</p> <p>21 A. It didn't necessarily change my opinion 22 because I was looking at all three of them as 23 conspirators to commit murder. Who was the ring 24 leader or the main conspirator, I used air quotes, 25 was really in my opinion inconsequential, they were</p>
<p style="text-align: center;">107</p> <p>1 month-and-a-half or more?</p> <p>2 A. No, it wouldn't surprise me. Insofar as, 3 you know, most of the times -- once these reports 4 are dispatched and a soldier is listed as a subject 5 and they are titled, you know, there's a requirement 6 for the Commanders to flag that soldier. And part 7 of the flagging is suspension for favorable actions 8 and suspension of their security clearance. But 9 that's not -- that's incumbent upon the chain of 10 command to make sure those flags are initiated. 11 Sometimes commands -- it's not an automatic process 12 to where the Commander can just turn on his computer 13 and flip a switch and flag somebody. There's a 14 process that the command authority and SJA can speak 15 toward. But, unfortunately, for my slice of the 16 pie, if you will, I'm not familiar with that 17 mechanism. So to say that it would take a month, I 18 can't say that it surprises me, because I'm not 19 familiar with what the normal, you know, how long it 20 would normally take, you know.</p> <p>21 Q. If you would go to page nine of Exhibit 22 11. You mentioned before that you remembered there 23 was a number of interviews that were conducted in 24 connection with this case, the conspiracy to commit 25 murder, correct?</p>	<p>109</p> <p>1 all being looked at as subjects of this 2 investigation. It was definitely interesting and 3 something that would be of note and of interest to 4 make sure the command and the SJA were aware of, but 5 it did not really surprise me.</p> <p>6 Q. Did Agent Dale relate to you any specific 7 statements that were made about Aguigui by some of 8 the witnesses who were interviewed that led him to 9 that conclusion?</p> <p>10 A. I'm sure that he did, but I don't remember 11 that conversation verbatim.</p> <p>12 Q. Do you recall any -- do you recall whether 13 he told you about statements that were made by 14 Solider Arranyos's wife, Jessica Valdez?</p> <p>15 A. I don't remember that at all. I'm not 16 saying we did not have a conversation, but I don't 17 remember.</p> <p>18 Q. Is it significant if a soldier threatens the 19 life of another soldier?</p> <p>20 A. So if a soldier threatens the life of 21 another soldier. I guess it would depend on that 22 type of threat. Whether it's something like simple 23 communication of a threat, you know, verbal; or 24 whether it's presentation of actual deadly force. 25 Again, it all depends on the circumstances and</p>

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<p style="text-align: center;">110</p> <p>1       <b>severity.</b></p> <p>2       <b>If two soldiers are arguing in the</b></p> <p>3       <b>barracks and one of them makes the statement, quote,</b></p> <p>4       <b>I'm going to kill you, end quote, that doesn't carry</b></p> <p>5       <b>the same severity in my opinion as someone pointing</b></p> <p>6       <b>a loaded weapon at someone else and threatening to</b></p> <p>7       <b>kill them.</b></p> <p>8       Q. Aside from threats, what about if a</p> <p>9       soldier talks about killing other soldiers?</p> <p>10      A. <b>If a soldier talks about killing other</b></p> <p>11      <b>soldiers?</b></p> <p>12      Q. Right. With third parties.</p> <p>13      A. <b>Right. It's a concern in my opinion, this</b></p> <p>14      <b>is Wes Toole's opinion, it's obviously a concern.</b></p> <p>15      <b>But then, you know, in the absence of an overt act,</b></p> <p>16      <b>then, you know, that is something that may not rise</b></p> <p>17      <b>to the conspiracy level. But would still be enough</b></p> <p>18      <b>concern to make people aware of.</b></p> <p>19      Q. I know there's a bunch of notes here, but</p> <p>20      as you sit here today, do you recall whether any of</p> <p>21      the witnesses that were interviewed by CID gave an</p> <p>22      alternative target for conspiracy to commit murder</p> <p>23      that that witness claimed Isaac Aguigui was trying</p> <p>24      to kill or planning to kill with the shotgun that he</p> <p>25      purchased?</p>	<p style="text-align: center;">112</p> <p>1       did Aguigui talk about killing his wife? A. After</p> <p>2       he bought his shotgun. It looks like he says, He</p> <p>3       cracked a joke and said we all can split the money</p> <p>4       if we keep quiet.</p> <p>5       Does it look like I read that correctly?</p> <p>6       A. <b>It looks like that's correct, yes, sir.</b></p> <p>7       Q. Were you aware that this statement was</p> <p>8       made by a witness?</p> <p>9       A. <b>I don't know that I was aware at the time</b></p> <p>10      <b>of this statement, and I don't recall this being</b></p> <p>11      <b>brought to my attention afterward. I don't remember</b></p> <p>12      <b>it.</b></p> <p>13      Q. In light of the date here, this is</p> <p>14      June 15th, 2011, correct?</p> <p>15      A. <b>Yes, sir.</b></p> <p>16      Q. Knowing now what happened a month later,</p> <p>17      do you consider that statement to have been</p> <p>18      significant?</p> <p>19      MS. JOHNSTON: Happened at the time or</p> <p>20      now?</p> <p>21      BY MR. BROOK:</p> <p>22      Q. Or do you consider that statement</p> <p>23      significant in light of what you learned a month</p> <p>24      later?</p> <p>25      A. <b>Looking back in hindsight, it's certainly</b></p>
<p style="text-align: center;">111</p> <p>1       A. <b>With the shotgun that he purchased. I'm</b></p> <p>2       <b>not aware of any other target. And, again, like you</b></p> <p>3       <b>said, without reviewing everything, and as I sit</b></p> <p>4       <b>here today, that does not -- that does not ring any</b></p> <p>5       <b>bells.</b></p> <p>6       <b>(Exhibit 29 marked.)</b></p> <p>7       BY MR. BROOK:</p> <p>8       Q. Now, Exhibit 29 bears Bates numbers</p> <p>9       JAHR0002066 through 2068.</p> <p>10      A. <b>I was handed two of these.</b></p> <p>11      Q. Do you recognize this document?</p> <p>12      A. <b>I recognize this insofar as it's a sworn</b></p> <p>13      <b>statement. It is marked with file number -- CID</b></p> <p>14      <b>204-11-CID-093. And appears to be a sworn statement</b></p> <p>15      <b>of an indiscernible first name, last name Valdez.</b></p> <p>16      <b>But that's the only way I recognize it.</b></p> <p>17      Q. Do you recall whether you in conducting</p> <p>18      your SAC review on this case ever looked at actual</p> <p>19      sworn statements that had been signed by any</p> <p>20      witnesses?</p> <p>21      A. <b>I would assume that I had, but I don't</b></p> <p>22      <b>recall this statement specifically.</b></p> <p>23      Q. I'd like to specifically direct your</p> <p>24      attention to the second page right in the middle.</p> <p>25      There's a statement in the Q and A, it says, When</p>	<p style="text-align: center;">113</p> <p>1       of interest. Looking at it at the time, I have no</p> <p>2       way to know what Jessica Vadelz's credibility is,</p> <p>3       what her motivation in rendering statements are or</p> <p>4       motivations toward Aguigui or the wife or any of the</p> <p>5       other conspirators. So, again, this would have been</p> <p>6       something that would have been noteworthy and</p> <p>7       something to consider. There was no way at the time</p> <p>8       to consider this to have been significant without</p> <p>9       the benefit of hindsight.</p> <p>10      Q. I'm actually talking about after --</p> <p>11      obviously at the time the statement was made, you</p> <p>12      had no idea that Aguigui was going to kill his wife?</p> <p>13      A. <b>No.</b></p> <p>14      Q. But once his wife ended up dead, how is it</p> <p>15      possible that no one from CID recognized that this</p> <p>16      statement was in the file?</p> <p>17      A. <b>I can't say that no one from CID</b></p> <p>18      <b>recognized it was in the file. All I can say is I</b></p> <p>19      <b>did not know it was in there.</b></p> <p>20      Q. Whose responsibility would it have been to</p> <p>21      make sure this statement in this 204 file was known</p> <p>22      to those who were investigating the homicide?</p> <p>23      A. <b>The Case Agent to whom the case was</b></p> <p>24      <b>assigned or that was managing the investigation.</b></p> <p>25      Q. Case Agent. Would the Team Chief also</p>

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<p>1 have responsibility if he was aware of it?</p> <p>2     <b>A. The Team Chief would have the</b></p> <p>3     <b>responsibility to review the statements to evaluate</b></p> <p>4     <b>them as evidence.</b></p> <p>5     Q. And you testified earlier that you brought</p> <p>6     Agent Dale, Andrew Dale, to be involved in the</p> <p>7     homicide investigation of Deidre Aguirui</p> <p>8     specifically because he was familiar with this case</p> <p>9     file?</p> <p>10    <b>A. Yes, sir.</b></p> <p>11    Q. Besides Agent Andrew Dale, can you think</p> <p>12    of anyone else who might have knowledge about</p> <p>13    whether this statement was or was not communicated</p> <p>14    to those that were investigating the homicide?</p> <p>15    <b>A. Besides Agent Dale and Investigator Atkins</b></p> <p>16    <b>who took the statements, the only other person that</b></p> <p>17    <b>I would know whether or not this information was</b></p> <p>18    <b>relayed to the investigating team for Deidre's death</b></p> <p>19    <b>would be Agent Kapinus and Agent Fox. They would</b></p> <p>20    <b>know whether or not this information was</b></p> <p>21    <b>communicated to them.</b></p> <p>22    Q. Is that the kind of information that a CIC</p> <p>23    is supposed to notice during a review?</p> <p>24    <b>A. It's something that a CIC would -- we</b></p> <p>25    <b>would want a CIC to review and extrapolate. But,</b></p>	<p>114</p> <p>1 getting that done?</p> <p>2     <b>A. No, sir. There's a saying that we have in</b></p> <p>3     <b>the Army, it's all met T. It all depends on the</b></p> <p>4     <b>mission, troops, terrain. So it's situation</b></p> <p>5     <b>dependent. It would all depend on her availability.</b></p> <p>6     <b>What all was going on, current operations, timing of</b></p> <p>7     <b>things. Do we want to talk to someone else before</b></p> <p>8     <b>we talk to her? Are there other things that we need</b></p> <p>9     <b>to gather? So there's not an automatic trigger</b></p> <p>10    <b>that's put on that. Unless a supervisor says, By</b></p> <p>11    <b>this date I want you to do it. That's outside of</b></p> <p>12    <b>those things that we discussed on the Investigative</b></p> <p>13    <b>Plan where you have to identify -- interview</b></p> <p>14    <b>eyewitnesses or victims within 24 hours.</b></p> <p>15    Q. So in this instance, it's not someone who</p> <p>16    was an eyewitnesses or victim as far as this was</p> <p>17    concerned?</p> <p>18    <b>A. As far as this was concerned, no, sir.</b></p> <p>19    Q. Towards the end of this, it says, Brief</p> <p>20    Commander and SJA, provide high risk memo to</p> <p>21    command.</p> <p>22    So is that telling investigators Spencer</p> <p>23    and Atkins to brief the SJA?</p> <p>24    <b>A. That's the way that appears, yes, sir.</b></p> <p>25    Q. And which Commander, which Commander does</p>
<p>115</p> <p>1 again, it all depends when in the review process the</p> <p>2 CIC looks at the case. As I stated earlier, CIC,</p> <p>3 you know, it's -- CIC is supposed to look at a case</p> <p>4 at the initiation and prior to the closure, but then</p> <p>5 is encouraged to look at the life cycle of the case,</p> <p>6 as well. Depending on when the statement was</p> <p>7 obtained, when the CIC saw that case again, or if</p> <p>8 they were able to see it again, unknown whether or</p> <p>9 not they would have seen that or not.</p> <p>10    Q. If you would, please, turn to the next</p> <p>11 page on Exhibit 11 to page 20. And the continuation</p> <p>12 of the entry by Andrew Dale that we were looking at</p> <p>13 earlier. It says -- first full paragraph, Also, we</p> <p>14 need to interview Aguirui's wife and determine what</p> <p>15 all she knows about the drugs and conspiracy.</p> <p>16    Who was that statement directed to, as far</p> <p>17 as you can tell?</p> <p>18    <b>A. I would -- it seems that the statement was</b></p> <p>19    <b>directed towards investigators Spencers and Atkins.</b></p> <p>20    <b>And I'm saying that because he returned the file --</b></p> <p>21    <b>or he noted that he was returning the file back to</b></p> <p>22    <b>those two, so I assume that's who he directed it to.</b></p> <p>23    Q. When a statement like that is made, are</p> <p>24 there any of the time frame requirements that we</p> <p>25 were talking about earlier that are applicable to</p>	<p>117</p> <p>1 that refer to?</p> <p>2     <b>A. That would refer to his immediate chain of</b></p> <p>3     <b>command, and also up to the battalion.</b></p> <p>4     Q. And is it your understanding that's</p> <p>5 referring to Aguirui's chain of command?</p> <p>6     <b>A. Yes, sir.</b></p> <p>7     Q. And it also refers to provide high risk</p> <p>8 memo to chain command?</p> <p>9     <b>A. Yes, sir.</b></p> <p>10    Q. How would you characterize the purpose of</p> <p>11 the high risk memo?</p> <p>12    <b>A. So what's referred to here, is high risk</b></p> <p>13    <b>memo. What I believe that he's referring to is the</b></p> <p>14    <b>memorandum pertaining to monitorship of --</b></p> <p>15    <b>monitorship of persons under investigation. That's</b></p> <p>16    <b>a memorandum that was published by the Commander of</b></p> <p>17    <b>CID, and it's required for CID agents to provide it</b></p> <p>18    <b>to commander subject to anytime we bring them into</b></p> <p>19    <b>our office for questioning, you know, they are</b></p> <p>20    <b>advised of their rights. The purpose of this</b></p> <p>21    <b>memorandum, it was initiated after an Army study,</b></p> <p>22    <b>and I can't quote the study, but they basically</b></p> <p>23    <b>found what they believed to have been a -- some type</b></p> <p>24    <b>of significance or a significant statistical link</b></p> <p>25    <b>between persons under investigation and being higher</b></p>

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<p>1 risk for suicide and self-harm. Because the CID --    2 commanding general of the CID was aware of this    3 study, he deemed it appropriate that a memorandum be    4 provided to all Commanders, anytime someone is under    5 investigation, brought in, advised of their rights    6 and put in the title block. This memorandum be    7 provided to them to remind them about the fact    8 soldiers under CID will often experience stress. We    9 would encourage you to take appropriate steps to    10 make sure that they did not harm themselves. So it    11 was a suicide prevention tool.</p> <p>12 Q. Doesn't the memo also refer to the    13 possibility of soldiers under investigation harming    14 others?</p> <p>15 A. I don't know if that memorandum that was    16 issued did or not, because that was a previous    17 commanding general at the time. And without the    18 benefit of having that memorandum, I can't say    19 whether that did or not.</p> <p>20 Q. Was this a standardized memorandum?</p> <p>21 A. Yes, sir.</p> <p>22 Q. If I wanted to find a copy of that    23 memorandum, or if you wanted to find a copy of that    24 memorandum now, where would you go look for that?</p> <p>25 A. A copy of that memorandum now? I don't</p>	<p>120</p> <p>1 of them.</p> <p>2 We were talking earlier about canvas    3 interviews of a unit?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Do you know how many people it was that    6 were being specified for canvas interviews in this    7 instance?</p> <p>8 A. I have no idea, sir. I mean, it's hard    9 for me to say. I'm reading Rear-D, which means rear    10 detachment, 6-8 CAV. Each unit, depending on the    11 type of unit they are, a calvary unit, say a company    12 size element or what they would call a troop, they    13 are not all standard across every Army installation.    14 And then a rear detachment, I mean, that could be    15 anywhere from 15 soldiers to 38. I have no idea    16 so --</p> <p>17 Q. As you read this, this is something that    18 was given as an instruction to the investigator by    19 the Team Chief, correct?</p> <p>20 A. That's the way this looks, yes, sir.</p> <p>21 Q. So if he was not going to complete the    22 task, there would have had to have been something    23 like the conversation that you mentioned earlier you    24 would expect to have?</p> <p>25 A. Yes, sir.</p>
<p>119</p> <p>1 know. Because the only version that I have now is    2 the current version under our current Commander. I    3 don't know that I have any historical record of what    4 it was in 2011. U.S. Army Criminal Investigation    5 Command, I don't know if they have historical    6 archives of what that memo looked like then.</p> <p>7 Q. But because it's a standardized memo, it's    8 not something that was kept in the case file when it    9 was issued, correct?</p> <p>10 A. I don't know if it was kept in the case    11 file or not. Because we issue it to the Commander,    12 we give them the memorandum.</p> <p>13 MR. BROOK: Go off the record for a    14 second.</p> <p>15 (Off-the-record.)</p> <p>16 MR. BROOK: Back on.</p> <p>17 BY MR. BROOK:</p> <p>18 Q. If you could turn to page 27 of Exhibit    19 11. And this is a continuation of an entry by    20 Andrew Dale that we were looking at earlier before    21 lunch today. The entry that is -- starts with --    22 where it's supposed to be coordinate, says,    23 Coordinate with Captain Daniels. Obtain a list of    24 all Rear-D 6-8 CAV soldiers since January 11th to    25 current. And then conduct canvas interviews of all</p>	<p>121</p> <p>1 Q. If Investigator Atkins, for example, got    2 this and he was not able to get the list from    3 Captain Daniels that this refers to, what should he    4 have done next?</p> <p>5 A. You're asking me what should    6 Investigator -- what should the investigator have    7 done if he wasn't able to get the list?</p> <p>8 Q. The list from Captain Daniels as    9 instructed.</p> <p>10 A. Well, I can't really say what Atkins would    11 have done. There's any number of different    12 recourses from that point. I could tell you what I    13 would do if I were given that task. Is either try    14 to obtain a list, otherwise. But if the list could    15 not be obtained, then I would go back to my    16 supervisor and we'd look at a different approach.</p> <p>17 Q. Can you think of any reason why you would    18 just ignore it when you couldn't get the list and    19 move on to other things without mentioning it to    20 your supervisor?</p> <p>21 A. I mean, I can think of any number of    22 things that could happen in any given scenario, but    23 the most likely thing that happened here, which    24 occurs in investigations every day, is the person    25 tries to accomplish the task to the best of their</p>

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<p>1       ability. If they encounter resistance or inability  2       to do so, they adjust. They either adjust on the  3       fly or they adjust under the advice of their Team  4       Chief. That's part of the -- part of what we want.  5       And we try to foster in investigators, is the  6       ability to think independently. Yes, we give  7       guidance and direction every single day, but we also  8       expect them to exercise discipline initiative. So I  9       don't need somebody that's necessarily going to come  10      back to me every five minutes and say, "Hey, Chief,  11      I tried to do this but I couldn't." And now I have  12      to tell them what to do. I can get a whole company  13      of privates to do that for me.</p> <p>14      So I know that's a long answer, but it's  15      kind of difficult to answer that question, because I  16      don't know what Atkins tried to do or did not try to  17      do or what he may have said or did not say.</p> <p>18      Q. I understand that you don't know what  19      happened. But if what happened was that Atkins  20      tried to get a list, was unable to do so after one  21      attempt, and then never made another attempt again  22      for five months, would that be acceptable in your  23      view?</p> <p>24      A. Again, it all depends on the circumstances  25      and the situation. If he tried to get the list and</p>	<p>1       Q. So red did not have anything to do with  2       the type of case or how far along it was?</p> <p>3       A. No.</p> <p>4       Q. I'm going to hand you what's been  5       previously marked as Exhibit 13. This is the case  6       activity summary for the Deidre Aguirre homicide?</p> <p>7       A. Yes.</p> <p>8       Q. This is what you reviewed to prepare for  9       this deposition?</p> <p>10      A. Yes, sir.</p> <p>11      Q. How carefully did you review it?</p> <p>12      A. I'll be honest with you, I made several  13      valent efforts to read through the entire thing. I  14      went through and reviewed as many of the entries  15      that had my name mentioned in there, but I wasn't  16      able to read every single page. And kind of been  17      going to midnight the last past three nights, so  18      it's been kind of hard.</p> <p>19      Q. In doing so, did that refresh your  20      recollection of what went on in this case?</p> <p>21      A. Somewhat, yes.</p> <p>22      Q. I'd like to direct your attention to page  23      three. There's an entry by you on July 17th, 2011.  24      Says, Created new entity, entity ID number 2331691  25      with data copied from Aguirre, Isaac Glenn, entity</p>
<p>1       wasn't able to in the scenario that you described,  2       and then did not try again for another five months,  3       I want to know, okay, what was he doing that five  4       months. If he was sitting in an office playing  5       Brick Breaker on a computer; yes, that would be  6       unacceptable. But if he's going out catching bad  7       guys and solving other felony investigations while  8       still perusing this one, it's understandable.</p> <p>9       Q. The next line it says, "Get a red case  10      file folder for this ROI and get this case file all  11      in order." What is the significance of a red case  12      file folder?</p> <p>13      A. It's just an administrative thing.  14      There's not a standardized way across CID on the  15      colors of folders and what they mean or anything  16      like that. I think what he's -- and I'm trying to  17      put myself in what he would try to say by saying at  18      the time at that office, the red case folders were  19      multi-file folders, so they had dividers in them.  20      The Greene folders that we had, they were the  21      cheaper, single thing. I think what he's trying to  22      say, what I would be trying to say in that, we are  23      starting to accumulate a lot of documents here, we  24      want to make sure they are organized well. Move it  25      over into another folder.</p>	<p>1       ID number 2318915. What was going on?</p> <p>2       A. So what it appears was going on there,  3       this entry was made at 22:40 on the night of the  4       17th, which is the night we were notified about the  5       death. This is an automated type entry, it's  6       nothing that I manually entered in. So I was logged  7       into ACS2 at the time, and while the agents were  8       still conducting scene investigation and interviews,  9       I started building the file. Started building the  10      file in Alert. So I was migrating information we  11      already had in the file to create a new entity.  12      Basically populating the system.</p> <p>13      Q. So is this indicating that there were --  14      there was a new entity ID number that also referred  15      to Isaac Aguirre? I'm trying to understand, what is  16      an entity ID number?</p> <p>17      A. Okay. So any entity that we input --  18      let's say I go into alerts or ACS or our automated  19      system and I type in someone's name, I enter it in  20      and hit apply. It assigns a specific entity ID  21      number. It's an automatic generated number. If I  22      go back in -- let's say this was in a case two  23      months ago. If I go back in and I'm building a new  24      case and that person is also an entity in mind and I  25      go to enter their name, I can copy the information</p>

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<p style="text-align: center;">126</p> <p>1       <b>that was already inputted so I don't have to go</b>    2       <b>through and write down -- type in everything else,</b>    3       <b>they are already captured in there. I can just copy</b>    4       <b>it over and it assigns a new entity number, because</b>    5       <b>it's a separate investigation.</b></p> <p>6       Q. So just as there's a different case number    7       for each investigation, each individual would have a    8       separate entity number for each investigation they    9       appear in?</p> <p>10      A. <b>Yes, sir. Because they will show up as</b>    11      <b>what we call unique offenders. If one soldier is</b>    12      <b>the subject of five different CID LERs over time,</b>    13      <b>every time they are entered in they will be assigned</b>    14      <b>a different entity number.</b></p> <p>15      Q. Turning to page five, in the middle there,    16      it refers to an interview you conducted of Sergeant    17      First Class Sean Waldron?</p> <p>18      A. <b>Yes, sir.</b></p> <p>19      Q. You previously testified that you did not    20      recall any interviews other than the phone call that    21      you received from a friend of Aguigui's mother?</p> <p>22      A. <b>Yes, sir.</b></p> <p>23      Q. Looking at this entry now, do you recall    24      this interview?</p> <p>25      A. <b>Vaguely. And I don't believe this was</b></p>	<p>1       Q. Okay. Please turn to page 11 at the top    2       on July 18th. There's an entry by you referring to    3       a call received from Mrs. Angie Bowen. Is this the    4       phone call you referred to earlier in your testimony    5       about a mother of a friend of Aguigui's?</p> <p>6       A. <b>Yes, sir, I believe it is.</b></p> <p>7       Q. Was Ms. Bowen actually associated with the    8       Beaufort County Sheriff's Office?</p> <p>9       A. <b>I think the reason why I put in there --</b>    10      <b>associated with her Beaufort County Sheriff, I think</b>    11      <b>whenever she called, she was saying, Hey, I'm a</b>    12      <b>dispatcher with Beaufort County Sheriff's Office, I</b>    13      <b>just want to let you know. She identified herself</b>    14      <b>with Beaufort County Sheriff's Office.</b></p> <p>15      Q. So she wasn't just a witness calling from    16      the sheriff's office?</p> <p>17      A. <b>She was -- she was a person reporting</b>    18      <b>information to us, who also told us that she</b>    19      <b>happened to be employed by the Beaufort County</b>    20      <b>Sheriff's Office. She wasn't calling like in an</b>    21      <b>official capacity that, Hey, this is so and so with</b>    22      <b>the Beaufort County Sheriff's Office.</b></p> <p>23      Q. And you made note here that she had told    24      you Aguigui made statements indicating that he    25      planned on moving to Columbia, South Carolina and</p>
<p style="text-align: center;">127</p> <p>1       <b>really an in-depth interview. Not like sitting down</b>    2       <b>in a room together. This was happening, again, you</b>    3       <b>see the time that it took, about ten minutes.</b>    4       <b>Because he was PSE Aguigui's Acting First Sergeant,</b>    5       <b>just trying to determine what information he might</b>    6       <b>know that would be helpful to us. I did not</b>    7       <b>specifically remember at the time. But looking at</b>    8       <b>that now, I remember talking to Sean Waldron.</b></p> <p>9       Q. What was the significance of noting that    10      Private First Class Aguigui was friends with    11      Specialist Schaefer?</p> <p>12      A. <b>We typically want to -- we want to</b>    13      <b>identify people who are close to anyone in an</b>    14      <b>investigation. Basically trying to develop a list</b>    15      <b>of possible leads so we can evaluate it later and</b>    16      <b>prioritize them to see whether or not, interview of</b>    17      <b>this person, Schaefer, his friend, etcetera,</b>    18      <b>etcetera, is something that we need to pursue.</b></p> <p>19      Q. Now, the designation NFI after Specialist    20      Schaefer, does that indicate that you know no    21      further information about this specialist?</p> <p>22      A. <b>It meant that at the time when I entered</b>    23      <b>this in, I did not know his first name or unit,</b>    24      <b>Social Security number, things like that. Just</b>    25      <b>Specialist Schaefer was all I was told.</b></p>	<p>1       was in the process of obtaining an undetermined    2       amount of money through unknown means.</p> <p>3       What significance did that statement have    4       to you at the time?</p> <p>5       A. <b>At the time what it meant to me was</b>    6       <b>that -- yeah, at the time, it was suspicious to me,</b>    7       <b>that he was planning on moving. So I did not -- I</b>    8       <b>did not take too much -- I did not take that to mean</b>    9       <b>too much, because that could either mean, he plans</b>    10      <b>on getting out, whatever, that he's in the process</b>    11      <b>of obtaining an amount of money. I don't know if</b>    12      <b>that means because he wanted to rip off this drug</b>    13      <b>dealer that we were already investigating, or that</b>    14      <b>he planned on getting out of the Army and getting a</b>    15      <b>new job. But looking at it all in its totality at</b>    16      <b>that time, I found it suspicious and that's why we</b>    17      <b>wanted to action this and look into it further.</b></p> <p>18      Q. Do you recall whether you took any    19      specific action with respect to Aguigui regarding    20      his attempts to get insurance benefits or death    21      benefits as a result of his wife's death?</p> <p>22      A. <b>If I took specific actions?</b></p> <p>23      Q. Yes.</p> <p>24      MS. JOHNSTON: To Aguigui?</p> <p>25</p>

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<p>130</p> <p>1 BY MR. BROOK:</p> <p>2 Q. With anyone. If you took any actions.</p> <p>3 A. So I recall a conversation that I had with</p> <p>4 Casualty Affairs Office with regard to death</p> <p>5 gratuity benefits.</p> <p>6 Q. Does death gratuity benefits include the</p> <p>7 SGLI?</p> <p>8 A. Yes, sir.</p> <p>9 Q. When did that conversation take place?</p> <p>10 MS. JOHNSTON: You can look.</p> <p>11 A. All right. I'm reviewing my CAS. So</p> <p>12 looking at the Case Activity Summary at 08:30 on the</p> <p>13 morning of the 19th, I had a conversation with Ms.</p> <p>14 Oates, Casualty affairs Office regarding the SGLI.</p> <p>15 Q. And do you remember that conversation?</p> <p>16 A. Somewhat. I remember having the</p> <p>17 conversation. I remember certain details of it.</p> <p>18 But I remember it.</p> <p>19 Q. Who initiated the call?</p> <p>20 A. Says that Mrs. Oates contacted us. Says,</p> <p>21 contacted by Mrs. Oates.</p> <p>22 Q. Is that consistent with your recollection?</p> <p>23 A. I mean, that's -- I recall the</p> <p>24 conversation, but I don't remember who picked up the</p> <p>25 phone first, so that's why I'm going off the CAS</p>	<p>132</p> <p>1 A. I don't remember -- can you rephrase --</p> <p>2 not rephrase it, can you restate the question?</p> <p>3 (Requested portion read.)</p> <p>4 THE WITNESS: And, again, I don't know</p> <p>5 whether we had a conversation -- I do remember</p> <p>6 having a conversation with Greene about the</p> <p>7 death gratuity and benefits, I don't recall if</p> <p>8 it was before this conversation with Ms. Oates</p> <p>9 or afterward. But I remember us having a</p> <p>10 conversation about, you know, whether or not</p> <p>11 the CAO's office would be paying those benefits</p> <p>12 or those -- the SGLI, whether or not they would</p> <p>13 pay them or if there was any way they could</p> <p>14 withhold paying it until we could figure things</p> <p>15 out better. Also the fact that we don't have</p> <p>16 any control over that mechanism either way. I</p> <p>17 remember a conversation about that, but I don't</p> <p>18 remember it in sequence. I don't remember what</p> <p>19 triggered what, if that helps.</p> <p>20 BY MR. BROOK:</p> <p>21 Q. Why were you concerned about trying to</p> <p>22 have the pay withheld from Private Aguigui?</p> <p>23 A. Because we had suspicion about Aguigui's</p> <p>24 involvement in his wife's death. Naturally, I did</p> <p>25 not want to see until we could either exonerate him</p>
<p>131</p> <p>1 that says I was contacted by Mrs. Oates.</p> <p>2 Q. Do you recall having any conversations</p> <p>3 with other agents at the CID office before having</p> <p>4 this conversation with Mrs. Oates?</p> <p>5 A. I don't recall the sequence of events that</p> <p>6 were going on beforehand or after whenever I had</p> <p>7 this call. You know, this again, this was in 19</p> <p>8 July, 2011. I remember the phone call, because I</p> <p>9 remember it had to do with the SGLI of Aguigui. But</p> <p>10 the events and circumstances surrounding it, I don't</p> <p>11 recall.</p> <p>12 Q. Specifically do you recall talking about</p> <p>13 Aguigui's attempting to get death gratuity benefits</p> <p>14 with Special Agent Greene?</p> <p>15 A. Do I remember it? I don't remember a</p> <p>16 specific conversation, but that doesn't mean that we</p> <p>17 did not. In fact, I'm pretty confident I had</p> <p>18 conversations with Agent Greene about it, he was my</p> <p>19 Assistant Special Agent in charge so we had a lot of</p> <p>20 different conversations. Especially about this</p> <p>21 case, yes, sir.</p> <p>22 Q. Did you talk with Agent Greene about</p> <p>23 proactively contacting the Casualty Assistance</p> <p>24 Office, telling them not to make death benefit</p> <p>25 payments to Private Aguigui?</p>	<p>133</p> <p>1 completely or determine that he did cause the death,</p> <p>2 did not want to see the government pay out SGLI to</p> <p>3 somebody we later determined had killed her. That</p> <p>4 was the only concern there.</p> <p>5 Q. Had you ever encountered this potential</p> <p>6 situation before with any of your death</p> <p>7 investigations?</p> <p>8 A. No.</p> <p>9 Q. Have you encountered it since?</p> <p>10 A. Yes. No, actually I was incorrect in</p> <p>11 that. I had encountered it once before with an</p> <p>12 investigation we had at Fort Stewart a few months</p> <p>13 prior when I was the Assistant Special Agent in</p> <p>14 charge. We had a spouse that stabbed her husband to</p> <p>15 death and she was immediately listed as the subject</p> <p>16 in the case. And the benefits were withheld until</p> <p>17 we were able to exonerate her. Long story short, it</p> <p>18 was ruled as justifiable homicide because he was</p> <p>19 attacking her, attempting to rape her.</p> <p>20 So I was somewhat familiar, but I was the</p> <p>21 ASAC at the time, so I had some little level of,</p> <p>22 okay, so there's a whole process here on CAO can</p> <p>23 only pay it out whenever a -- or they can't pay it</p> <p>24 out if somebody is listed as a subject.</p> <p>25 Q. Now, is it only if a person is listed as a</p>

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35 (Pages 134 to 137)

<p style="text-align: center;">134</p> <p>1 subject, what if a person is a person of interest?</p> <p>2 <b>A. If a person is a person of interest. What</b>  <b>3 was – and, again, reviewing back to the CAS entry</b>  <b>4 detailing this conversation, she contacted – she</b>  <b>5 contacted us asking if he was – if he was a suspect</b>  <b>6 or if he was a person of interest. What I explained</b>  <b>7 to her was that Aguigui had not been listed as the</b>  <b>8 subject of our case, which is that title block, but</b>  <b>9 that we had not ruled him out either. And we</b>  <b>10 suggested that the payment be withheld until we can</b>  <b>11 either, you know, rule him out or include him as our</b>  <b>12 primary suspect. That's the way that I recall that</b>  <b>13 conversation going.</b></p> <p>14 Q. And how did Ms. Oates respond when you      15 told her that?</p> <p>16 <b>A. She seemed okay with that. She said,</b>  <b>17 Okay, that seems reasonable. We can withhold</b>  <b>18 payment until we get word that he's either cleared;</b>  <b>19 or, Yes, he's the subject.</b></p> <p>20 Q. Did you speak with Ms. Oates again after      21 that?</p> <p>22 <b>A. I don't remember if I do or not. Or if I</b>  <b>23 did or not.</b></p> <p>24 Q. If you did speak with her, is that      25 something you would have also noted in the CAS?</p>	<p style="text-align: center;">136</p> <p>1 could not say whether he could be ruled out or not.</p> <p>2 So it would seem extremely, extremely unlikely that</p> <p>3 I had a conversation to say, Yeah, we ruled him out.</p> <p>4 Q. Do you recall whether you promised Ms.</p> <p>5 Oates to get back in touch with her after the</p> <p>6 autopsy of Deidre Aguigui?</p> <p>7 <b>A. Did you ask is it possible?</b></p> <p>8 Q. Can you recall whether --</p> <p>9 <b>A. I don't recall if I did or not. But that</b>      10 <b>sounds like -- if she says that we had said that --</b>      11 <b>or I said that, that sounds something that's</b>      12 <b>reasonable. Because that would be my full intent.</b>      13 <b>I can't really tell you anything -- I'm not going to</b>      14 <b>know anything until after the autopsy.</b></p> <p>15 Q. And as you sit here today, you're not sure</p> <p>16 whether you had a conversation with her after the</p> <p>17 autopsy or not?</p> <p>18 <b>A. Well, I'm trying to remember. The autopsy</b>      19 <b>was completed, but we still did not have a report or</b>      20 <b>any results or anything. I think even up until the</b>      21 <b>time I left. So, again, I don't remember another</b>      22 <b>conversation with Ms. Oates, but I don't think we</b>      23 <b>would have had any conversation about the results of</b>      24 <b>autopsy or anything like that.</b></p> <p>25 Q. In your experience, how long does it</p>
<p style="text-align: center;">135</p> <p>1 <b>A. It's possible, yes, sir.</b></p> <p>2 Q. Is it possible that you would not have      3 noted it in the CAS?</p> <p>4 <b>A. That's possible, also.</b></p> <p>5 Q. How would you decide whether or not to      6 note it in the CAS?</p> <p>7 <b>A. It probably wouldn't have been a decision.</b>  <b>8 It probably would have been based on the fact we're</b>  <b>9 overseeing 140 different investigations and I get a</b>  <b>10 two-minute call from somebody while someone else is</b>  <b>11 walking in the door. It could have been one of</b>  <b>12 those where we talked and I just did not document</b>  <b>13 it.</b></p> <p>14 Q. Do you recall at any point in time telling      15 her that Private Aguigui was not a person of      16 interest in the death of his wife?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Is it possible that you may have said      19 something like that to her?</p> <p>20 <b>A. Anything is possible, but I would find it</b>  <b>21 highly, highly unlikely. Because by the time I was</b>  <b>22 deploying, he had not been ruled out. By the time I</b>  <b>23 left that office, he had not been ruled out.</b>  <b>24 Because to the best of my recollection we still</b>  <b>25 hadn't been provided with a cause of death, so we</b></p>	<p style="text-align: center;">137</p> <p>1 typically take for an autopsy report to be received      2 by CID?</p> <p>3 <b>A. So based on my experience, it really all</b>      4 <b>depends on the type of death, the event and</b>      5 <b>circumstances surrounding it. You know, I'll give</b>      6 <b>two examples.</b></p> <p>7 One, if a person is in a car, witnesses,      8 and, you know, they get into a traffic accident,      9 usually you would expect that autopsy would come      10 back relatively soon. Within a month or two.</p> <p>11 Something else where someone died under, you know,      12 unusual circumstances, it could take months. More      13 than months. Possibly up to a year depending on the      14 complexity of it. But, you know, at a minimum it's      15 going to take a few months.</p> <p>16 Q. Is CID required to wait for an official      17 autopsy report before making someone a subject of a      18 report of investigation for homicide?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Does CID typically wait for an autopsy      21 report before doing so?</p> <p>22 <b>A. We typically try to have all available</b>      23 <b>evidence in order to review in its totality so we</b>      24 <b>can make an intelligent decision on credible</b>      25 <b>information for titling purposes.</b></p>

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## 36 (Pages 138 to 141)

<p>1       Q. The note on -- I think we were looking at  2       it's page 16 for July 19th, 2011 regarding Ms.  3       Oates. At the end it says, Ms. Oates provided a  4       contact number, I guess for herself and also a  5       number for the appointed casualty affairs office  6       Sergeant First Class Lapsley.  7       Did you ever speak with Sergeant First  8       Class Lapsley?  9       <b>A. I'd have to look through the AESs to  10      confirm that. I assume that I did, by I'll have to  11      confirm it.</b>  12       Q. Direct your attention to the top of page  13      25.  14       <b>A. Yes, sir. Thank you. Review of the CAS,  15      I contacted Sergeant Lapsley on 19 July.</b>  16       Q. Do you recall that conversation at all?  17       <b>A. I don't specifically recall that  18      conversation. But, you know, I can tell you most of  19      the Casualty Affairs -- the CAO coordinations that  20      are done before a CLO brief, if you will, they are  21      typically designed to -- the intent is to make sure  22      that I have good points of contact with the family,  23      with them to explain -- and also to explain CID  24      roles and responsibilities and what me, as the SAC,  25      what my responsibilities are in keeping the family</b></p>	<p>148  1       not. It's quite possible, but I can't remember.  2       Because I remember having a conversation with  3       another agent about the death gratuities. But I  4       can't remember if it was whenever I was already  5       deployed. I don't recall.  6       Q. I know this is a time period after you  7       were already deployed, but if you could turn to page  8       75, Exhibit 13.  9       <b>A. Yes, sir.</b>  10       Q. At the bottom there's a quality control  11      entry on December 7th, 2011 by Larry Turso. Did you  12      know Larry Turso?  13       <b>A. Yes, sir, I did.</b>  14       Q. Who is he?  15       <b>A. Larry Turso was the Assistant Operations  16      Officer for the Benning CID Battalion.</b>  17       Q. So you reported to him?  18       <b>A. No, sir. I reported to the operations  19      officer and the Battalion Commander. Mr. Turso was  20      an assistant to the Operations Officer. I say that  21      to say he was not in my rating chain in military  22      parlance.</b>  23       Q. So he occupied the same position that you  24      did when you first got to your current post?  25       <b>A. Yes, sir.</b></p>
<p>139  1       <b>informed.</b>  2       Q. Did you inform Sergeant Lapsley that  3       Private Aguigui was a person of interest in the  4       investigation?  5       <b>A. I don't know if I did or not.</b>  6       Q. Do you know what happened with the death  7       gratuity benefit for Deidre Aguigui after your  8       conversation with Ms. Oates?  9       <b>A. I heard after the fact that they had paid  10      out. That Private Aguigui was paid SGLI at some  11      point. I don't know when, but I heard about that  12      after the fact.</b>  13       Q. Who did you hear about that from?  14       <b>A. I don't remember. I don't know if it was  15      from another agent or -- I can't remember.</b>  16       Q. Do you remember if it was before or after  17      the reporting of the Roark and York murders that  18      Aguigui was implicated in at the end of 2011?  19       <b>A. I don't remember.</b>  20       Q. Were you ever contacted about that for  21      purposes of CID determining what you said to the  22      insurance -- or to the death gratuity benefits  23      people?  24       <b>A. I don't remember. I don't remember if I  25      was -- if I was contacted by anybody about that or</b></p>	<p>141  1       Q. Now, I'd like you to look at the bottom of  2       page 76, it's a continuation of a fairly long entry.  3       Remarks, Good call by Mr. Toole on delaying payment.  4       How did we screw this up? Continues on the next  5       page. Perhaps we need to look into freezing his  6       accounts.  7       Were you aware of this statement by  8       Mr. Turso?  9       <b>A. I was made aware of that entry by  10      Mr. Turso after the fact, yes, sir.</b>  11       Q. And how were you made aware of it?  12       <b>A. I recall -- I had a conversation with an  13      agent who was here at the time. And I don't  14      remember who I had the -- who told me about it, but  15      they told me about this review that he put in there.</b>  16       Q. And did you attempt to try to answer the  17      question that he had posted?  18       <b>A. No. I had my own office in Kuwait that I  19      was worried about whenever he put that review in.</b>  20       Q. I'd like you to turn to page 78. What  21      appears to be a response by Case Agent Jeremy Fox to  22      the entry by Mr. Turso that we looked. On the  23      middle of page 78, a third of the way down, Mr. Fox  24      wrote, Discussed with CAO. Their records indicate  25      the exact time and date of the coordination</p>

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<p style="text-align: center;">142</p> <p>1 documented in this case file by SAC Toole. However, 2 their notes stated he was not a person of interest. 3       Were you aware that that was what their 4 notes showed?</p> <p>5       <b>A. I was made aware of that after reviewing 6 these CAS entries.</b></p> <p>7       Q. Recently you mean?</p> <p>8       <b>A. Yes, sir.</b></p> <p>9       Q. Were you aware of that before preparing 10 for this deposition?</p> <p>11       <b>A. No, sir.</b></p> <p>12       Q. Does that surprise you that was in their 13 notes?</p> <p>14       <b>A. Yes.</b></p> <p>15       Q. Were those notes incorrect?</p> <p>16       <b>A. I can't say what those notes said or not, 17 all I can tell you is what they conveyed to Agent 18 Fox that he documented here. I will say that if 19 their notes depicted that he was not a person of 20 interest, if those notes said that, then those notes 21 would not be correct.</b></p> <p>22       <b>(Exhibit 30 marked.)</b></p> <p>23       Q. Let's take a look the Exhibit 30.</p> <p>24       Before we get to this, I want to follow up 25 on something you said before. You had a</p>	<p style="text-align: center;">144</p> <p>1 purchasing weapons either while I was the SAC or 2 while I was deployed. I can't remember the timeline 3 when I learned that information or when I did not. 4       Q. Looking at this Exhibit 30, page nine. 5 The numbers are at the bottom left of each page. 6       <b>A. Yes, sir.</b></p> <p>7       Q. For whatever reason this printed out 8 without a Bates number on it. Page 9 of 130 it 9 says. At the top there's an entry that is dated 10 July 19th, 2011. That's the same date that we were 11 just looking at in the CAS, correct?</p> <p>12       <b>A. Yes, sir.</b></p> <p>13       Q. If you would, please, read through that 14 paragraph entry at the top referring to Agent Toole 15 and Mr. Plumey by Rosa Oates. And when you're done, 16 let me know.</p> <p>17       <b>A. Okay, sir.</b></p> <p>18       Q. Having now seen the notes from staff 19 journal Rosa M. Oates, is there anything in there 20 that you just read incorrect?</p> <p>21       <b>A. The information that I see that's 22 inconsistent is that the depiction saying that I 23 said the spouse was not a person of interest. I 24 told them that the spouse was not listed as a 25 subject at this time; however, we had not ruled him</b></p>
<p style="text-align: center;">143</p> <p>1 conversation with an agent about the remarks made by 2 Mr. Turso, which agent was that?</p> <p>3       <b>A. I don't remember which agent it was. I 4 remember I had a conversation -- either while I was 5 deployed or whenever I came back. It was just one 6 of those things, catching up things, how's this case 7 going. And someone made a comment about that 8 review.</b></p> <p>9       Q. And as you sit here today, do you know 10 what Private Aguigui did with the money that he 11 received?</p> <p>12       <b>A. I don't know what he did with that money. 13 I know what I've been told what he did with it, but 14 I don't know what he did with it.</b></p> <p>15       Q. What were you told he did with it?</p> <p>16       <b>A. I was told that people have suggested that 17 he used the money to purchase weapons.</b></p> <p>18       Q. And who told you that?</p> <p>19       <b>A. I don't remember. I don't remember if it 20 was another agent or if it was something that I read 21 in the news. Any number of sources.</b></p> <p>22       Q. While you were a SAC in Fort Stewart, were 23 you aware of any purchase of weapons by Private 24 Aguigui?</p> <p>25       <b>A. I don't remember if I found out about</b></p>	<p style="text-align: center;">145</p> <p>1 out on whether or not he is a person of interest. 2 It appears that there was miscommunication here. 3 Either that or a misunderstanding on the part of the 4 person that entered this information.</p> <p>5       Q. Do you recall whether you told her, the 6 person that you were speaking to, that there was an 7 autopsy that was going to be performed that morning 8 and that upon review of the results you would be 9 able to state whether or not the spouse is a person 10 of interest?</p> <p>11       <b>A. I don't remember saying that specifically. 12 But that seems very unreasonable considering we are 13 not given the results of an autopsy at completion of 14 the exam itself. When we leave an autopsy suite, 15 sometimes it jumps right out at you, There's two 16 bullet holes in somebody. Other times in a case 17 like this, we are not going to know what the results 18 are, so we can't say whether someone still has been 19 ruled out or not. So it would seem highly unusual 20 that I would make any assurances that, Hey, once 21 they are done with the autopsy this morning, I'll be 22 able to tell you what happened.</b></p> <p>23       Q. How long was the phone call between you 24 and Ms. Oates?</p> <p>25       <b>A. I can't recall. But if I look at the</b></p>

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<p style="text-align: center;">146</p> <p>1     CASs, it might give me an indication of the time. I  2     mean, I'm going to go out on a limb and say it was  3     brief. Yeah, so approximately five minutes  4     according to the CASs that I entered into. About a  5     five-minute conversation.</p> <p>6     Q. And that entry would have been made  7     relatively quickly after the call?</p> <p>8     A. <b>I would think so.</b></p> <p>9     Q. Aside from what you have mentioned before  10    about not being able to say whether the spouse was a  11    person of interest, is there anything else that you  12    noted -- and what else we talked about, about the  13    autopsy, is there anything else about that that you  14    think is incorrect in these notes?</p> <p>15    A. <b>I don't know. Because most of the  16    information contained with this note also has  17    internal conversations between other people that I  18    did not have a conversation with, so aside from  19    what's -- where it mentions me, I can't say whether  20    something is accurate or not.</b></p> <p>21    Q. Now, if you would, please, turn to page  22    15. There's a bottom entry, again by a Rosa Oates  23    dated July 21st, 2011. And if you would, please,  24    read through that and let me know when you're done.</p> <p>25    A. <b>Yes, sir.</b></p>	<p>1     conversation did not take place as it was depicted  2     here. Not exactly. Because, you know, she's again  3     saying the spouse-- that I'm saying that Agent West,  4     I don't know who that is, stated that the spouse is  5     not considered a person of interest. I never had  6     that conversation, saying that someone is not a  7     person of interest. So I probably said that the  8     spouse is not listed as a subject at this time, but  9     we haven't been able to rule it out. That seems  10    more consistent with what the conversation would  11    have been.</p> <p>12    Q. Okay. Just to confirm. This is your  13    first time seeing these notes?</p> <p>14    A. <b>Yes, sir.</b></p> <p>15    Q. And your testimony is that these notes are  16    quite inaccurate; is that right?</p> <p>17    A. <b>I don't know that I would characterize  18    them as quite. Because, again, a lot of the  19    information within this note -- this is referring to  20    other people that aren't me. But the portion that  21    does refer to me, is not the conversation that I  22    recall having with the CAO's office.</b></p> <p>23    Q. Having read this, do you recall whether  24    you spoke with anyone at the CAO office besides Ms.  25    Oates?</p>
<p style="text-align: center;">147</p> <p>1     Q. Having seen these notes, does this refresh  2     your recollection about a subsequent conversation?</p> <p>3     A. <b>Yes, sir, it does.</b></p> <p>4     Q. And what do you recall about that  5     conversation?</p> <p>6     A. <b>I recall them contacting -- contacting me  7     again several days later. Again, asking, Have you  8     guys been able to make a determination? I said, No,  9     there has not been any change, we are still waiting  10    on, you know, to determine what the cause was so  11    that we can see whether -- you know, Mr. Aguigui  12    is -- whether he's still a person of interest, but  13    we haven't been able to rule him out.</b></p> <p>14     What I recall from the conversation say,  15     Well, a soldier has to be, you know -- they have to  16     be listed as a subject or if they are not -- if they  17     are not charged -- I forget the verbiage that she  18     used, but it was something that did not apply to us  19     and CID reporting. Well, if a soldier is not  20     charged or arrested within a certain amount of time,  21     the payment is going to go through. I said, All I  22     can tell you is we have had no change. I can't tell  23     you that he is the offender, but I can't rule it out  24     either yet.</p> <p>25     So I do recall that conversation. The</p>	<p>149</p> <p>1     A. <b>No. The only person I can remember  2     talking to was Ms. Oates and then Sergeant Lapsley  3     is referred to as a CAO, but he's not assigned to  4     the CAO's office. It's usually the Casualty Affairs  5     Officer appointed to the family. It's usually  6     someone from a different unit and they are appointed  7     a temporary appointment order. So those two  8     individuals are the only two I can remember from the  9     CAO representation that I talked to.</b></p> <p>10    Q. CAO is separate from CID, correct?</p> <p>11    A. <b>Yes, sir.</b></p> <p>12    Q. To your knowledge, is there any amount of  13    official coordination between the CAO and CID  14    office?</p> <p>15    A. <b>Only during a death investigations we'll  16    normally coordinate with the CAO's office to figure  17    out, Hey, have you appointed a Casualty Affairs  18    Officer yet, can you provide me with their contact  19    information so that I can do those CLO briefs that  20    we discussed. And also, if there's issues with  21    returning property back to the next of kin, property  22    that we might have collected as evidence, making  23    sure that gets back to the next of kin. But that's  24    kind of the extent of the involvement that CID and  25    CAO normally have.</b></p>

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39 (Pages 150 to 153)

<p style="text-align: center;">150</p> <p>1 Q. Do you know whether in recent years 2 there's been any sort of change in the process of 3 how CAO confirms whether or not someone is a person 4 of person of interest before making death gratuity 5 payments?</p> <p>6 <b>A. I'm not familiar with CAO's policies or</b> 7 <b>practices.</b></p> <p>8 MR. BROOK: Okay. Show you what we are 9 going to mark as Exhibit 31. 10 (Exhibit 31 marked.)</p> <p>11 BY MR. BROOK:</p> <p>12 Q. This is a document bearing Bates 13 JAHR0001493 through 1494. And I know this document 14 is not addressed to you in any way, but is this a 15 form document along the lines of something that you 16 have seen?</p> <p>17 <b>A. I've never seen this document before.</b></p> <p>18 Q. Are you familiar with the Thrift Savings 19 Plan?</p> <p>20 <b>A. Yes, sir.</b></p> <p>21 Q. What is that?</p> <p>22 <b>A. It's -- I mean, it's a plan for soldiers,</b> 23 <b>other Federal employees, in order to pay into --</b> 24 <b>toward retirement.</b></p> <p>25 Q. Is that a private institution or is that</p>	<p style="text-align: center;">152</p> <p>1 and let me know when you're done.</p> <p>2 <b>A. Okay, sir.</b></p> <p>3 <b>All right, sir.</b></p> <p>4 Q. Starting first at the top, this is what 5 appears to be a copy of an email from Kirk Knoll, 6 K-n-o-l-l, to a Curtis Brunsting, B-r-u-n-s-t-i-n-g. 7 Do you recognize either of those names?</p> <p>8 <b>A. No, sir.</b></p> <p>9 Q. And this is dated May 6th, 2014. And do 10 you think it's a fair characterization to say that 11 this is basically a report generated by someone that 12 took the notes that we were just looking at and 13 accepted all those notes as the truth?</p> <p>14 <b>A. That's the way -- some of the information</b> 15 <b>that I read within this email creates the appearance</b> 16 <b>that the information that they are relating was</b> 17 <b>derived from or from something similar to the notes</b> 18 <b>that we reviewed earlier.</b></p> <p>19 Q. And prior to seeing this, did you have any 20 knowledge that there was an inquiry like this that 21 went on?</p> <p>22 <b>A. No, sir.</b></p> <p>23 Q. And you were never contacted by anyone to 24 try to confirm or deny whether you made the 25 statements reflected in these notes?</p>
<p style="text-align: center;">151</p> <p>1 part of the Army?</p> <p>2 <b>A. I don't know if -- I know that it's a</b> 3 <b>program that the Army uses that -- benefits that a</b> 4 <b>soldier can elect in order to pay into the TSP,</b> 5 <b>similar to an IRA. I don't know that it's Federally</b> 6 <b>or government administered or whether it's</b> 7 <b>contracted privately. I don't know. I know some of</b> 8 <b>my money every month goes out into my TSP.</b></p> <p>9 Q. Although you haven't seen this form, have 10 you seen any form of any kind relating to confirming 11 whether individuals are under investigation in 12 relation to death gratuity benefits?</p> <p>13 <b>A. No. I can't remember any forms that CID</b> 14 <b>comes across. And I don't know that this is</b> 15 <b>something that's instituted locally or installation</b> 16 <b>by installation, I don't know. I can tell you, this</b> 17 <b>is the first time I've seen this form.</b></p> <p>18 MR. BROOK: Exhibit 32. 19 (Exhibit 32. marked.)</p> <p>20 BY MR. BROOK:</p> <p>21 Q. So showing you what's been marked as 22 Exhibit 32. And this is pages 127 and 128 out of 23 130 also taken from the staff journal from the 24 Casualty Assistance Office. If you would, please, I 25 know it's relatively lengthy, just read through this</p>	<p style="text-align: center;">153</p> <p>1 <b>A. Not that I remember, no.</b></p> <p>2 Q. Can you think of why you possibly would 3 have forgot something like that?</p> <p>4 <b>A. I mean, I've never had a formal</b> 5 <b>conversation sitting down and being interviewed by</b> 6 <b>anybody having to do with anything regarding this</b> 7 <b>case or these circumstances until now. I've had</b> 8 <b>conversations with people about, you know, the fact</b> 9 <b>that the money that was paid out. But, again, those</b> 10 <b>were conversations that I had with other agents</b> 11 <b>where we were discussing circumstances around the</b> 12 <b>case, whether I was deployed or came back from</b> 13 <b>deployment.</b></p> <p>14 Q. And none of them ever told you that you 15 were the guy who they were saying said that Aguigui 16 was not a person of interest?</p> <p>17 <b>A. I don't remember anybody saying that I was</b> 18 <b>the guy that told them that. I mean, cops get</b> 19 <b>accused of stuff all the time. Hey, they said you</b> 20 <b>did this. That's why I'm saying -- I'm not trying</b> 21 <b>to be dodgy in my response. Because it's possible</b> 22 <b>that someone could have said, Hey, did you hear that</b> 23 <b>this -- it's possible someone could have said that.</b> 24 <b>But it did not really register as a significant</b> 25 <b>event for me, because I did not see it as an issue,</b></p>

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<p style="text-align: center;">154</p> <p>1 because I know what I did and did not say. I know, 2 so --</p> <p>3 Q. So you had no knowledge at the very least 4 of any sort of formal decision being made?</p> <p>5 A. No, sir. I wasn't involved in anything 6 like that. And especially this date of 2014, I 7 mean, I was already here at Fort Campbell working 8 over at the battalion. And the first contact that I 9 had regarding this was whenever I was called a few 10 weeks ago.</p> <p>11 Q. So have you ever heard of anything 12 relating more generally to an attempt by the family 13 of Deidre Aguigui, her parents, to get death 14 gratuity benefits paid to them?</p> <p>15 A. No. Not until -- this is for Deidre 16 Aguigui. No, I haven't --</p> <p>17 Q. I may have misspoke. Okay. But did you 18 ever speak to Deidre Aguigui's parents?</p> <p>19 A. I did. Again, the CASs would reflect 20 those formal casually liaison briefings that were 21 provided. But, you know, I spoke with them once 22 whenever they were at the quarters I believe, 23 whenever I had to allow them in, escort them in to 24 get a few personal effects out. I don't remember 25 how many times I had -- I engaged with them, but,</p>	<p style="text-align: center;">156</p> <p>1 being conducted. It may be on-the-fly a team chief 2 huddling his guys together and going over certain 3 aspects of Appendix D. It might be one-on-one 4 mentorship. It's not set an in stone format on how 5 it's going to be done every single time.</p> <p>6 Q. Is training on that ever done based upon a 7 perception that people in the office need it?</p> <p>8 A. Sure. Yes, sir.</p> <p>9 Q. Do you know whether any such training was 10 ordered in connection with the Isaac Aguigui cases?</p> <p>11 A. I don't know.</p> <p>12 Q. Do you recall whether you had an opinion 13 as the SAC in Fort Stewart that the special agents 14 could use additional training on Appendix D?</p> <p>15 A. Every agent can use additional training on 16 Appendix D. Whenever I come into my office in the 17 morning, there's two things I open up. CID reg 18 195-1 and my email on two different screens. 19 Because I've been doing this for 19 years, and I'm 20 constantly having to go through the regs. Every 21 agent needs continual refresher. By reviewing cases 22 you identify, Hey, we need to draw this person back 23 to. Hey, we need to do this. So it's an ongoing 24 process.</p> <p>25 Q. Do you know what it means to have a raw</p>
<p style="text-align: center;">155</p> <p>1 you know --</p> <p>2 MR. BROOK: We can go off the record for a 3 second.</p> <p>4 (Off-the-record.)</p> <p>5 BY MR. BROOK:</p> <p>6 Q. In December of 2011, were you deployed to 7 Kuwait at that time, right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Do you know what CID regulation 195-1 10 Appendix D is?</p> <p>11 A. Yes, sir.</p> <p>12 Q. What is that?</p> <p>13 A. Investigative standards.</p> <p>14 Q. And is there regular training on Appendix 15 D for CID agents?</p> <p>16 A. At least every quarter whenever we go 17 through staff assistance reviews, initial command 18 inspections, subsequent command inspections, and 19 then on-the-spot training is provided. So most 20 agents are pretty familiar with Appendix D.</p> <p>21 Q. And when there's training on Appendix D, 22 is that something that the whole office shuts down 23 for?</p> <p>24 A. It depends on the office. Who is in 25 charge of the office. What type of training is</p>	<p style="text-align: center;">157</p> <p>1 data file that's called Extremist RDF?</p> <p>2 A. Yes, sir. I know what the raw data file 3 is.</p> <p>4 Q. Can you describe that for me?</p> <p>5 A. A raw data file, it's a sequence action 6 that you open in alerts or ASC2 and then you create 7 a physical file. So if -- I'll give you an example. 8 In my office, I keep several different raw data 9 files. I keep one for general crimes, for economic, 10 for drugs suppression activity. As we get 11 information that may not be actionable or credible 12 yet, we'll put it in a raw data tab and then the 13 agent -- whoever is responsible for that raw data 14 file will then evaluate it and see if it's 15 actionable. If we need to open up an investigation 16 or not.</p> <p>17 Q. Okay. And have you ever had an Extremist 18 raw data file?</p> <p>19 A. Extremist raw data file. So you're asking 20 me as the SAC at Fort Stewart or me right now 21 whether I've had an Extremist raw data file?</p> <p>22 Q. I'm asking in general, have you ever heard 23 of an Extremist raw data file?</p> <p>24 A. Sure.</p> <p>25 Q. What is put into an Extremist raw data</p>

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<p>1 file?</p> <p>2 <b>A. Any information that – my interpretation</b>  <b>3 of what an Extremist, using air quotes, raw data</b>  <b>4 file would be, anything having to do with hate bias</b>  <b>5 groups, gangs, you know, counter-establishment</b>  <b>6 organizations that undermine law enforcement,</b>  <b>7 government. Any of those type of things. Extremist</b>  <b>8 organizations, hate bias. I call it something</b>  <b>9 different. We have a gang RDF at my office. But</b>  <b>10 that's what I would put in that.</b></p> <p>11 Q. Were you aware whether or not there was an  12 Extremist raw data file that mentioned Isaac Aguigui  13 in 2011?</p> <p>14 <b>A. I don't know.</b></p> <p>15 Q. Do you have any recollection of that?</p> <p>16 <b>A. I don't remember.</b></p> <p>17 Q. Is that something that could be  18 significant when you're investigating someone for  19 potential crimes that there's a raw data file open  20 on them?</p> <p>21 <b>A. You're asking me about something I don't</b>  <b>22 even know existed was significant. I don't know.</b></p> <p>23 Q. Is it something that could be significant?</p> <p>24 <b>A. Sure. I mean, if – anything could be</b>  <b>25 significant when reviewed in its totality. So it's</b></p>	<p>160</p> <p>1 check the big criminal databases and the internal  2 CID stuff?</p> <p>3 <b>A. Yes, sir.</b></p> <p>4 Q. Is that something that's specified by  5 regulations?</p> <p>6 <b>A. It states that law enforcement record</b>  7 <b>checks will be done for people who are suspects of a</b>  8 <b>criminal offense. So there's several different</b>  9 <b>databases. The regulation doesn't specify -- it</b>  10 <b>does specify at a minimum the NCIS checks will be</b>  11 <b>done. But it does not specify further or doesn't</b>  12 <b>dictate further what law enforcement record checks</b>  13 <b>are. So, you know, obviously NCIS. There are</b>  14 <b>number of other law enforcement databases that an</b>  15 <b>individual can query. I mean, a laundry list could</b>  16 <b>be the length of your arm. So to try to hit every</b>  17 <b>single database, you know what I'm saying, it all</b>  18 <b>depends on the nature and circumstances. At a</b>  19 <b>minimum, we would do NCIS checks and then Crime</b>  20 <b>Records Center checks through our own internal</b>  21 <b>system there. But, otherwise, it doesn't say you</b>  22 <b>will check this and you will check that.</b></p> <p>23 Q. And you mentioned name checks have to be  24 done on suspects, was the word that you used. Does  25 suspect equal a person of interest or a subject?</p>
<p>159</p> <p>1 just very difficult to answer if I don't know that  2 there was something like that. And then considering  3 when that information was known, what the quality  4 and type of information there was, there's just a  5 lot of ifs in that to see whether or not it would be  6 significant or I would think it's significant.</p> <p>7 Q. In order to know you would have to see the  8 raw data?</p> <p>9 <b>A. I would have to see it and then review it</b>  10 <b>in terms of what the information said. When that</b>  11 <b>information was obtained. What it was in regards</b>  12 <b>to. It would have to be evaluated in its totality.</b></p> <p>13 Q. Do you know if someone is mentioned in an  14 Extremist or raw data file in general, is that  15 something that comes up when you run a name check on  16 that individual?</p> <p>17 <b>A. So if you were to conduct a search of</b>  18 <b>alerts or ACI2, yes, that would come up if that</b>  19 <b>person was entered in as an entity. If you went on</b>  20 <b>and did like a typical NCIC, law enforcement</b>  21 <b>criminal background, it would not show up. There's</b>  22 <b>no conviction associated with it, it's just an</b>  23 <b>indexing like database.</b></p> <p>24 Q. For CID name check procedures, for someone  25 who is a person of interest, are you supposed to</p>	<p>161</p> <p>1 <b>A. The term suspect and person of interest</b>  2 <b>are in my opinion kind of interchangeable. More</b>  3 <b>terms of art versus technical terms. A subject is</b>  4 <b>someone, hey, we have credible information they are</b>  5 <b>going in the title block, they are the subject of</b>  6 <b>our investigation. A person of interest or suspect</b>  7 <b>is someone that we have information about, but we</b>  8 <b>are still trying to evaluate that and either confirm</b>  9 <b>it or rule it out.</b></p> <p>10 Q. Just one last question. Ms. Tolbert was  11 with CIC; is that correct.</p> <p>12 <b>A. That's correct.</b></p> <p>13 Q. Let's go to page 7 of Exhibit 13.</p> <p>14 <b>A. Seven you said?</b></p> <p>15 Q. Yes. And there is a continuation of the  16 entry we were looking at earlier by Larry Turso.</p> <p>17 After the question that we looked at where you asked  18 about the payment to Aguigui. He asked, How is it  19 possible that Ms. Tolbert cites, quote, no  20 information was identified to assist the Case Agent,  21 end quote, during a criminal review when Aguigui is  22 listed as a person of interest in 204-11-093  23 exclamation mark.</p> <p>24 <b>A. Yes, sir.</b></p> <p>25 Q. Do you know how that's possible?</p>

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<p style="text-align: center;">162</p> <p>1       A. I believe you probably would have to ask  2       Mr. Turso or Ms. Tolbert, because I'm sure they had  3       a question about it. I know how it's possible due  4       to the fact -- there's any number of ways that it  5       can be possible. If a person just simply overlooks  6       it or they make assumptions because the other case  7       is still ongoing. I mean, both of these cases were  8       opened simultaneously, so it's possible. I use the  9       word possible, that she may not have included that  10       or cited that in her criminal review because she  11       knew that both cases were ongoing simultaneously,  12       and knew that both of those teams were  13       communicating. Mr. Dale, Mr. Kapinus, me, the ASAC.  14       So it might not have registered to her to highlight  15       that, because it would be almost like stating the  16       obvious.</p> <p>17       Q. Now, as far as this reference goes,  18       Mr. Turso described Aguigui as a person of interest  19       in 204. But wasn't your testimony earlier that  20       based on these notes and your recollection, that he  21       was actually more than that, he was a subject?</p> <p>22       A. In 204?</p> <p>23       Q. In 204, that's the --</p> <p>24       A. The conspiracy. Yes, sir. It was my  25       testimony. But I can't tell you why Mr. Turso used</p>	<p>1       referring to Federal Law. Like arrest authority or  2       reasonable searches and seizures. That's not  3       reasonable application insofar as CID standard.  4       This is what we have to comply with. But those  5       internal policies that we as in CID place on  6       ourselves through the reg, there's a reasonableness  7       of application. And specific to Appendix D, there's  8       a caveat in there that explains, you know,  9       reviewers, auditors, etcetera, etcetera, will apply  10       reasonable application or reasonable -- I'm sorry  11       I'm getting stuck here. Based on a number of  12       factors. Whether it's manpower, operational tempo,  13       etcetera, etcetera.</p> <p>14       Q. And does -- and that applies to every  15       level of CID agent, is that right, so that each --  16       every CID agent no matter what their level of  17       responsibility applies to reasonable application  18       standards?</p> <p>19       A. Sure. Yes, sir. Yes, sir. And I'm  20       again, using an example as a way to try to explain  21       this. So if the regulation says that a case will be  22       reviewed by a supervisor once every ten working  23       days, and if it's day 11 and it's supposed to come  24       to me and that case isn't there, I'm not going to go  25       and give that agent a reprimand or a counseling</p>
<p style="text-align: center;">163</p> <p>1       the term person of interest in here. Aguigui was  2       listed as a subject in LER-204.</p> <p>3       Q. You mentioned that you keep open on your  4       computer a copy of the Regulation 195-1?</p> <p>5       A. Yes.</p> <p>6       Q. Is that because it's too much to memorize?</p> <p>7       A. Yes, sir.</p> <p>8       Q. How big is it?</p> <p>9       A. The current version on PDF is 784 pages,  10       before and including appendices and whatnot. It's  11       impossible to memorize. It's impossible to comply  12       with the letter of a regulation 100 percent of the  13       time at any given time. So that's the reason why we  14       are constantly providing training on it. Trying to  15       reinforce it. And why we had those quick reference  16       guides on there, etcetera, etcetera.</p> <p>17       Q. Now, you mentioned earlier there's a -- a  18       reasonableness component to Regulation 195-1?</p> <p>19       A. Yes, sir.</p> <p>20       Q. Does that apply to the entire regulation  21       or is it specific to the timing thing --</p> <p>22       A. Specific to Appendix D. I mean, there are  23       certain things throughout the regulation the  24       reasonable application standard applies. There are  25       some things such as anything where they are</p>	<p>165</p> <p>1       because it was one day late. Because I also know  2       they stayed up 48 hours doing this or they had this  3       case going on or they had this. So it's looking at  4       everything in totality and trying to balance the  5       fact that this is an art versus a science. And  6       there has to be a reasonable expectation on certain  7       things.</p> <p>8       Q. In your opinion, would it be reasonable  9       for a Team Chief not to know that there was no Case  10       Agent assigned to a case?</p> <p>11       A. There's no way that a Case Agent would not  12       be assigned to somebody. If a case was not assigned  13       to an agent or investigator subordinate to that Team  14       Chief, it's investigated by the Team Chief. It's  15       assigned to that Team Chief. So there's -- I don't  16       know how that's possible.</p> <p>17       MR. BROOK: Okay. I have no further  18       questions.</p> <p>19       MS. JOHNSTON: Nothing from me. We'll  20       reserve.</p> <p>21       COURT REPORTER: Do you want it typed up?</p> <p>22       MR. BROOK: Yes.</p> <p>23       MS. JOHNSTON: I'll take Etran.</p> <p>24       MR. BROOK: Yes.</p> <p>25       (Deposition concluded at 2:51 p.m.)</p>

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1 ACKNOWLEDGMENT OF DEPONENT  
2  
34 I, \_\_\_\_\_, do hereby  
5 acknowledge that I have read and examined the  
6 foregoing testimony, and the same is a true, correct  
7 and complete transcription of the testimony given by  
8 me, and any corrections appear on the attached Errata  
Sheet signed by me.9  
10  
11 (DATE) (SIGNATURE)  
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1 REPORTER CERTIFICATE  
2 STATE OF TENNESSEE  
3 COUNTY OF KNOX4 I, Michele Faconti, RPR, Licensed Court  
5 Reporter, LCR #667, in and for the State of  
6 Tennessee, do hereby certify that the deposition of  
7 Wes Toole taken on February 26th, 2016, was reported  
8 by me and that the foregoing transcript, pages 1  
9 through 167, inclusive, is a true and accurate  
10 record to the best of my knowledge, skills and  
11 ability.12 I further certify that I am not related to, nor  
13 an employee or counsel of any of the parties to the  
14 action as defined under T.C.A. Section 24-9-136, nor  
15 am I financially interested in the outcome of this  
16 case. Read and sign reserved.17 In witness thereof, I have hereunto set my hand  
18 on this 8th day of March, 2016.  
19  
20  
21  
22  
23  
24  
25Michele Faconti: 03/08/16  
22:32:01 AM; Knoxville  
Tennessee; TN LCR 667  
expires: 6-30-2016



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1

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